INTERNATIONAL COURT OF JUSTICE

MARITIME DELIMITATION
IN THE AREA BETWEEN
GREENLAND AND JAN MAYEN
(DENMARK/NORWAY)

MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE KINGDOM OF DENMARK

VOLUME I

JULY 1989

VOLUME I

TABLE OF CONTENTS

Page

INTRODUCTION 3

PART I. THE FACTS 5

CHAPTER I. SUBJECT MATTER AND HISTORY OF THE DISPUTE 7

Section 1. The General Geographical Context, the Disputed Area and the Relevant Area 7

A. The General Geographical Context 7

B. The Disputed Area 9

C. The Relevant Area 11

Section 2. History of the Dispute 12

CHAPTER II. GREENLAND 25

Section 1. History and Constitutional Status .. 25

A. History 25

B. Constitutional Status 27

Section 2. Population 36

Section 3. Geography, Geology and Climate .. 37

A. Geography 37

B. Geology 37

C. Climate 40

Section 4. Economic Structure and Exploitation of Resources 42

A. General Remarks 42

B. The Greenland Fisheries Sector 46

C. Activities regarding Greenland's Non-Living Resources 51

CHAPTER III. JAN MAYEN 53

Section 1. History and Status 53

Section 2. Geography 54

Section 3. Geology 54

Section 4. Utilization 55

PART II. THE LAW ... 57

CHAPTER I. THE PRINCIPLES AND RULES APPLICABLE TO MARITIME DELIMITATIONS ... 59

Section 1. General Principles and Rules ... 59
A. Convention on the Continental Shelf of 29 April 1958 ... 59
B. Convention on the Law of the Sea of 10 December 1982 ... 64
C. Case Law ... 68
D. State Practice ... 80

Section 2. Status of Islands in Maritime Delimitations ... 81
A. Case Law ... 82
B. State Practice ... 91

Section 3. The Relevant Factors in the Present Case ... 95
A. The Geographical Factor ... 95
B. The Population and Socio-Economic Factors ... 97
C. The Conduct of the Parties ... 101
D. The Proportionality Factor ... 102

CHAPTER II. THE TYPE AND METHOD OF DELIMITATION APPROPRIATE IN THE LIGHT OF THE CONCRETE CIRCUMSTANCES ... 113

Section 1. The Reasons for the Request for a Single Line of Maritime Delimitation ... 113

Section 2. The Method of Delimitation Appropriate in the Light of the Concrete Circumstances ... 117

PART III. SUBMISSIONS ... 123

MAPS ... 127

Map I. Map Showing the North East Atlantic Region
Map II. Map Showing the Disputed and Relevant Areas in their Geographical Context
Map III. Map Showing Greenland and Surrounding Waters
Map IV. Map Showing Maritime Zones in the North East Atlantic Region

LIST OF ANNEXES, cf. Volume II

Annex 1. Act No. 597 of 17 December 1976 on the Fishing Territory of the Kingdom of Denmark
Annex 2. Act No. 91 of 17 December 1976 relating to the Economic Zone of Norway
Annex 3. Letter of 3 July 1979 from the Danish Foreign Minister to the Norwegian Foreign Minister
Annex 4. Letter of 4 July 1979 from the Norwegian Foreign Minister to the Danish Foreign Minister
Annex 5. Summary (P.M.) concerning the Danish Foreign Minister's talk with the Norwegian Foreign Minister, in Reykjavik 30 – 31 August 1979
Annex 6. Executive Order No. 176 of 14 May 1980 on the Fishing Territory in the Waters surrounding Greenland
Annex 7. Royal Decree of 23 May 1980 on the Fishery Zone in the Sea Areas round Jan Mayen
Annex 8. Decree of the Crown Prince Regent, dated 30 June 1955, on the Outer Limit of the Norwegian Fishing Territory around Jan Mayen
Annex 9. Note Verbale of 4 June 1980 from the Royal Norwegian Embassy to the Danish Ministry of Foreign Affairs
Annex 10. Note Verbale of 9 June 1980 from the Danish Ministry of Foreign Affairs to the Royal Norwegian Embassy
Annex 11. Executive Order No. 437 of 31 August 1981 on the Fishing Territory in the Waters surrounding Greenland
Annex 12. Norwegian Warning of 31 August 1981 to Master of Danish Fishing Vessel
Annex 13. Interim Arrangement between Danmark and Norway regarding Monitoring of Fishing for Capelin in the Waters between Greenland and Jan Mayen
Annex 14. Regulations of 15 July 1975 concerning the Fishery Limits off Iceland
Annex 15. Law No. 41 of 1 June 1979 concerning the Territorial Sea, the Economic Zone and the Continental Shelf (of Iceland)

Annex 16. Agreement of 28 May 1980 between Norway and Iceland concerning Fishery and Continental Shelf Questions
Annex 17. Agreement of 12 June 1989 between Greenland/Denmark, Iceland and Norway on the Capelin Stock in the Waters between Greenland, Iceland and Jan Mayen
Annex 18. The Greenland Home Rule Act No. 557 of 29 November 1978
Annex 19. Survey of Matters Transferred to Greenland Home Rule and Dates of Transfer
Annex 20. Treaty of 13 March 1984 amending, with regard to Greenland, the Treaties establishing the European Communities
Annex 21. Agreement on Fisheries of 13 March 1984 between the European Economic Community, on the one hand, and the Government of Denmark and the local Government of Greenland, on the other
Annex 22. Commercial Fisheries Act of the *Landsting*, No. 11 of 21 November 1984
Annex 23. The Greenland Home Rule Executive Order No. 27 of 1 December 1987 on Fishing Quotas for 1988
Annex 24. The Role of Capelin in the Traditional Greenland Society
Annex 25. Total Annual and Seasonal Catches of Capelin in the Iceland – Greenland/ Jan Mayen Area since 1964
Annex 26. The Administration of Mineral Resources in Greenland
Annex 27. Act No. 585 of 29 November 1978 on Mineral Resources, etc. in Greenland, as amended by Act No. 844 of 21 December 1988 (Promulgation No. 88 of 8 February 1989)
Annex 28. Agreement of 22 October 1981 between Norway and Iceland on the Continental Shelf in the Area between Iceland and Jan Mayen
Annex 29. Agreement between Sweden and the USSR of 18 April 1988 on the Delimitation of the Continental Shelf and of the Swedish Fishing Zone and the Soviet Economic Zone in the Baltic Sea
Annex 30. Treaty between Denmark and the German Democratic Republic of 14 September 1988 on Delimitation of the Continental Shelf and the Fishing Zones
Annex 31. Agreement between Sweden and Poland of 10 February 1989 on Delimitation of the Continental Shelf and the Fishing Zones

Annex 32. Agreement between Denmark and Norway of 15 June 1979 concerning the Delimitation of the Continental Shelf in the Area between the Faroe Islands and Norway and concerning the Boundary between the Fishery Zone near the Faroe Islands and the Norwegian Economic Zone

Annex 33. Agreement between Denmark and Sweden of 9 November 1984 on the Delimitation of the Continental Shelf and Fishing Zones

Annex 34. Declaration between the Danish and Swedish Governments concerning the Boundaries of the Sound, signed at Stockholm, 30 January, 1932

Annex 35. Royal Decree of 3 June 1977 relating to the Fishery Protection Zone around Svalbard

Annex 36. Maritime Boundary Agreement between Chile and Peru by joint Declaration on the Maritime Zone, signed on 18 August 1952

Annex 37. Maritime Boundary Agreement between Peru and Ecuador by joint Declaration on the Maritime Zone, signed on 18 August 1952

Annex 38. Maritime Boundary Agreement between Uruguay and Brazil, signed on 21 July 1972

Annex 39. Maritime Boundary Agreement between Argentina and Uruguay (Treaty of the Rio de la Plata and its Maritime Boundary, 1973), signed on 19 November 1973

Annex 40. Maritime Boundary Agreement between Colombia and Ecuador, signed on 23 August 1975

Annex 41. Maritime Boundary Agreement between the United States of America and Cuba, signed on 16 December 1977

Annex 42. Maritime Boundary Agreement between Venezuela and the United States of America, signed on 28 March 1978

Annex 43. Maritime Boundary Agreement between the United States of America and Mexico (Caribbean Sea and Pacific Ocean), signed on 4 May 1978

Annex 44. Agreement between France and Tonga concerning the Delimitation of the Exclusive Economic Zones, signed on 11 January 1980

Annex 45. Agreement between France and Mauritius on the Delimitation of the Economic Zones between Reunion Island and Mauritius, signed on 2 April 1980

Annex 46. Maritime Boundary Agreement between the United States of America and the Cook Islands, signed on 11 June 1980

Annex 47. Maritime Boundary Agreement between Venezuela and France, signed on 17 July 1980
Annex 48. Maritime Boundary Agreement between Burma and Thailand, signed on 25 July 1980
Annex 49. Treaty between New Zealand and the United States of America on the Delimitation of the Maritime Boundary between Tokelau and the United States of America, signed on 2 December 1980
Annex 50. Maritime Boundary Agreement between St. Lucia and France, signed on 4 March 1981
Annex 51. Maritime Boundary Agreement between France and Australia (Coral Sea and Indian Ocean), signed on 4 January 1982
Annex 52. Agreement between France and Fiji of 19 January 1983 relating to the Delimitation of their Economic Zones
Annex 53. Agreement between Burma and India of 23 December 1986 on the Delimitation of the Maritime Boundary in the Andaman Sea, in the Coco Channel and in the Bay of Bengal
Annex 54. Agreement on Maritime Delimitation between France and Dominica, signed on 7 September 1987
Annex 55. Agreement between the Solomon Islands and Australia establishing certain Sea and Seabed Boundaries, signed on 13 September 1988

INTRODUCTION

1. On 16 August 1988 the Government of Denmark filed an Application with the International Court of Justice instituting proceedings concerning a dispute which had arisen between Denmark and Norway over the delimitation of the fishing zones and continental shelf areas between Greenland and Jan Mayen.

2. The point at issue is what effect should be given in a delimitation dispute to the island of Jan Mayen in relation to Greenland. Denmark claims a line equal to a 200-mile zone, Norway claims a median line. As the distance between Greenland and Jan Mayen is only about 250 nautical miles the respective claims result in an overlapping area. The size of the overlapping area is some 66,400 square kilometres.

3. Eight years of negotiation had preceded the filing of the Application. As a negotiated settlement did not materialize, the Government of Denmark decided to submit the dispute to the Court for decision in accordance with the declarations made by Denmark and Norway under Article 36(2) of the Statute of the Court.

4. In so doing the Government of Denmark has been strongly influenced by the importance for Greenland of establishing a clear jurisdictional line enabling the Greenland authorities to plan the future exploitation of the resources in the area in support of the Greenland community.

5. In its Application the Government of Denmark has asked the Court:

> "to decide, in accordance with international law, where a single line of delimitation shall be drawn between Denmark's and Norway's fishing zones and continental shelf areas in the waters between Greenland and Jan Mayen".

6. It is the opinion of Denmark that a single line of delimitation provides the best legal foundation for achieving stability and finality in the area.

7. The present Memorial is submitted in pursuance of the Court's Order dated 14 October 1988.

CHAPTER I.

SUBJECT MATTER AND HISTORY OF THE DISPUTE

Section 1. The General Geographical Context, the Disputed Area and the Relevant Area

A. The General Geographical Context

8. The general geographical context of the disputed area may be broadly described as the oceanic expanse constituted by the Greenland Sea and the Norwegian Sea.

9. Map I, annexed to this volume, depicts the region as a large body of water shaped as a parallelogram bounded to the west by the northern segment of the east coast of Greenland and to the east by the west coast of Norway. No continuous land boundaries exist to the north and to the south of the region. To the north the region is bordered by the Arctic Ocean and Barents Sea, and to the south by the North Atlantic Ocean and the North Sea.

10. The north-south extension of the parallelogram sea area is approximately 1,000 nautical miles, whereas the east-west extension is approximately 800 nautical miles. The greater part of the region lies to the north of the Arctic Circle (66°33'N latitude).

11. The general geographical context of the disputed area may be presented in greater detail by a description of the land masses of the region.

12. The Norwegian Svalbard (Spitzbergen) Archipelago is situated at the northeastern edge of the region. Svalbard (about 63,000 square kilometres) is separated from the east coast of Greenland by Fram Strait, approximately 250 nautical miles wide, leading to the Arctic Ocean. The western coast of Svalbard stretches for about 370 kilometres in an approximate NNW-SSE direction.
To the SE of Svalbard, the passage between the southernmost point of Svalbard and Norway, approximately 350 nautical miles wide, marks the boundary between the Norwegian Sea and Barents Sea. Straddling the boundary about 130 nautical miles south of Svalbard lies the Norwegian Bear Island (about 180 square kilometres).

13. Approximately 215 nautical miles to the south-east of Bear Island lies the mainland of Norway (about 324,000 square ki-

lometres) with a population of about 4.2 million. The west coast of Norway stretches for approximately 1,100 kilometres in a regular NNE-SSW direction.

14. The Faroe Islands, a self-governing region within the Danish Realm with a population of about 47,000, are situated to the west of southern Norway at the southern edge of the region on the boundary between the Norwegian Sea and the North Atlantic Ocean. The Faroe Islands (some 1,400 square kilometres) are oriented in a N-S direction extending over a distance of some 110 kilometres.

15. About 240 nautical miles to the NW of the western tip of the Faroe Islands lies the island State of Iceland (about 103,000 square kilometres) marking the boundary between the Greenland Sea and the North Atlantic Ocean. Iceland has a population of some 247,000. The northern coast of Iceland stretches for more than 450 kilometres in a generally E-W direction.
Approximately 55 nautical miles to the north of the central segment of the northern coast of Iceland, the tiny rock of Kolbeinsey is found. Kolbeinsey has an expanse of a few hundred square metres and a maximum altitude of 6 metres.

16. The northwestern part of Iceland is separated from the east coast of Greenland by the Denmark Strait, about 150 nautical miles wide, linking the Greenland Sea to the North Atlantic Ocean. The segment of the east coast of Greenland facing the Denmark Strait runs south-west from Cape Brewster for a distance of about 850 kilometres before turning to a SSW direction around Ammassalik towards Cape Farewell. North of Cape Brewster the coastline follows a roughly NNE direction until it turns north-west at Nordostrundingen, some 1,300 kilometres to the north.

17. The Norwegian island of Jan Mayen (about 380 square kilometres), is situated in the Greenland Sea approximately 300 nautical miles to the NE of Iceland, 510 nautical miles to the north of the Faroe Islands, 550 nautical miles to the west of Norway, 250 nautical miles to the east of Greenland, and 500 nautical miles to the SW of Svalbard.
The west coast of Jan Mayen runs in a NE-SW direction, opposite and almost parallel to the northern segment of the east coast of Greenland.

B. The Disputed Area

18. Map II, annexed to this volume, depicts in greater detail the disputed area and its immediate geographical surroundings, i.e., Jan Mayen, the relevant segment of the east coast of Greenland and Iceland.

19. The present dispute exists in the context of a relatively simple geography. The relevant segment of the east coast of Greenland runs, deeply incised by a number of major fiords, from Cape Alf Trolle to Cape Brewster in a roughly SSW direction facing the almost parallel and nearly linear north-west coast of Jan Mayen. To the south of Cape Brewster, the east coast of Greenland veers to a south-west direction and faces across the Denmark Strait to Iceland. Between Cape Alf Trolle and Cape Brewster the coast stretches for approximately 650 kilometres. The ice-free land mass between these two points is the most extensive in all of Greenland, at some places reaching a width of more than 300 kilometres. The area is a marked highland with a great number of peaks, some of which are almost 3,000 metres high. A multitude of fiords, among them some of the largest and deepest in the world, terminate in iceberg-producing glaciers originating from the ice cap. Numerous large and small islands, isles, islets, and rocks are strewn in front of the East Greenland land mass.

20. Jan Mayen is an elongated island tapering towards the south with a maximum length of about 54 kilometres and a maximum width of 16 kilometres. The coasts of Jan Mayen are straight and virtually without indentations.

21. Iceland is a roughly rectangular island State with a maximum east-west length of approximately 500 kilometres and a maximum north-south width of approximately 350 kilometres. Topographically, the north coast of Iceland is very similar to that of East Greenland, the mountainous coast being deeply indented by fiords. The altitude of the coastal region varies from flat sand banks to basalt formations of a maximum height of approximately 1,200 metres.

22. The straight baselines of the east coast of Greenland are shown on Map II.[1])

[1]) *Presently, two different baseline systems are in force in Greenland. A baseline for the fishery zone was promulgated by the Danish Government in 1976 and 1980, whereas a territorial sea baseline was promulgated in 1965. The baseline for the fishery zone established by Executive Order No. 176 of 14 May 1980 on the Fishing Territory in the Waters surrounding Greenland is employed for the purposes of this Memorial (Annex 6). The basepoints listed in the Order serve (with minor corrections) as basis for the computation of the Danish 200-mile fishery limit and the equidistance line between Greenland and Jan Mayen. The accuracy of the existing maps and charts from which*

23. The disputed area created by the overlapping claims of the Parties has a roughly triangular shape, a width at its maximum of about 75 nautical miles and a total expanse of about 66,400 square kilometres.
The area in dispute is represented by the figure ABCD shown on Map II. AB is the relevant segment of the 200-mile fishery limit claimed by Denmark off East Greenland. AD is the relevant part of the equidistance line claimed by Norway to be the limit of the Norwegian fishery zone off Jan Mayen vis-à-vis Greenland. The southern border of the disputed area is represented by the broken line BCD.

24. The dispute submitted to the Court is confined to the delimitation of the fishery zones and continental shelf areas appertaining to Greenland/Denmark and Norway.

25. The proximity of the State of Iceland to the disputed area makes it necessary, however, to ensure that the decision of the Court does not affect Iceland's rights. No other State has claims in the vicinity of the disputed area.

26. In an Agreement dated 28 May 1980 Norway recognized Iceland's right to a 200-mile economic zone vis-à-vis Jan Mayen, and in an additional Agreement dated 22 October 1981 the two countries agreed that the continental shelf boundary between Jan Mayen and Iceland was to coincide with the boundary of the Icelandic economic zone, cf. paragraphs 75 and 78.

27. No maritime delimitation agreement concerning the waters between Iceland and Greenland has been concluded between Iceland and Denmark.
Iceland has claimed a 200-mile economic zone providing that where the distance between Iceland and Greenland is less than 400 nautical miles, the equidistance line forms the outer limit of the economic zone. The outer limit of the continental shelf has been defined by Iceland as 200 nautical miles or the outer edge of the continental margin subject to the equidistance line vis-à-vis Greenland, cf. paragraphs 73 and 74.
Denmark has claimed a 200-mile fishery zone off Greenland, with

---

the basepoints have been selected does not meet today's standards and in order to remedy possible inaccuracies a geodetic/hydrographic reconnaissance expedition will be carried out in July – August 1989. The primary aim of the reconnaissance will be to ensure that the data on which the baseline system of the relevant part of the East Greenland coast is based is in conformity with geographic reality and the standards of present cartography. As a result of the reconnaissance a single list of corrected basepoints (given in Qornoq datum as well as in system WGS 84) will be submitted to the Court in due course.

the proviso that where the distance between Greenland and Iceland is less than 400 nautical miles the equidistance line serves as the outer limit of the fishery zone, cf. paragraph 49.
Iceland and Denmark are thus in agreement that the principle of equidistance will form the basis of a future delimitation of the waters between Greenland and Iceland.

28. Iceland's claim for a 200-mile economic zone with respect for the equidistance line vis-à-vis Greenland is identified as the sole third State claim of relevance to the dispute submitted to the Court.

29. In order to leave Iceland's 200-mile economic zone unaffected the disputed area is limited towards the south. Therefore, the Court is requested to limit its decision in geographical scope to the delimitation of the Parties' fishing zones and continental shelf areas in the waters north of the broken line BCD.
The line BCD is drawn from the intersection of the 200-mile limit of the Greenland fishery zone and the 69°36'N parallel of latitude (point B), via a point with the coordinates 69°49'N, 14°00'W (point C), to the intersection of the equidistance line between Greenland and Jan Mayen and the 69°51'N parallel of latitude (point D).
Thus, the proposed southern border of the disputed area is placed to the north of both the equidistance line between Iceland and Greenland and the Icelandic 200-mile limit vis-à-vis Jan Mayen, leaving the interests of Iceland unaffected[2]).

C. The Relevant Area

30. The area relevant to the delimitation dispute submitted to the Court is here determined solely on principles of geometry, cf. Map II.

31. The disputed area, represented by the triangularly shaped figure ABCD, cf. paragraph 23, serves as a basis for the determination of the relevant area.

---

[2]) *Inevitably, whatever delimitation line may eventually be drawn by the Court, the line will be cut short to the south by the exclusive economic zone of Iceland, the exact junction-point to be negotiated between Denmark/Greenland, Norway and Iceland. During these negotiations a problem may arise with regard to the small Icelandic rock of Kolbeinsey referred to in paragraph 15. In 1975 Iceland employed Kolbeinsey as a basepoint for the extension of the fishery zone to 200 nautical miles. The most recent promulgation of the Icelandic baselines is contained in Law No. 41 of 1 June 1979 concerning the Territorial Sea, the Economic Zone and the Continental Shelf (Annex 15). Denmark does not accept the legitimacy under international law of the Icelandic claim to use the rock of Kolbeinsey as a basepoint. Consequently, in describing the geographical area within which the delimitation between Greenland and Jan Mayen is to be effected the issue of Kolbeinsey has been disregarded.*

32. G and H are basepoints (baseline control points) on the baseline off East Greenland. Basepoint G geometrically controls the southern extremities of the disputed area, points B and D, whereas basepoint H controls the northern extremity of the disputed area, point A. Consequently, G and H constitute the terminal points of the relevant segment of the East Greenland baseline. The geodesic GH represents the relevant coastal front of Greenland vis-à-vis Jan Mayen. The coastal front stretches for approximately 532 kilometres. The length of the relevant East Greenland baseline is about 551 kilometres.

33. Points F and E are basepoints on the western baseline of Jan Mayen. F and E geometrically control points D and A of the disputed area, respectively[3]).
Thus, F and E are terminal points of the relevant segment of the Jan Mayen baseline vis-à-vis Greenland. The geodesic FE representing the coastal front of Jan Mayen measures some 54 kilometres. The length of the relevant western baseline of Jan Mayen, FE, is approximately 58 kilometres[4]).

34. Thus, the area relevant to the present delimitation may, based on principles of geometry, be determined as the oceanic expanse delimited by the polygon: A-E-the NW baseline of Jan Mayen-F-B-C-D-G-the relevant baseline of East Greenland-H-A.

35. The above definition of the relevant area has the advantage that the computation of all points on the 200-mile fishery limit and the equidistance line, constituting the limiting lines of the disputed area, are confined geometrically to the inside of the above polygon[5]). It thus appears that the geometrical approach to the determination of the relevant area offers a precise and objectively defined basis for the Court's delimitation.

Section 2. History of the Dispute

THE EXTENSIONS OF THE FISHERY ZONES IN THE AREA

36. In 1976 the Danish Parliament adopted Act No. 597 of 17 December 1976 on the Fishing Territory of the Kingdom of Denmark. The Act empowered the Danish Prime Minister to effect an

---

[3]) *The baselines around Jan Mayen are promulgated in Decree of the Crown Prince Regent, dated 30 June 1955 (Annex 8).*
[4]) *The baseline of Jan Mayen is not shown on Map II due to the scale of the map.*
[5]) *So far all computations have been done in a purely formal way, since no common vertical and horizontal datums yet have been established between the Parties and Iceland. All straight lines are to be regarded as geodesics.*

extension of the Danish fishery zone up to 200 nautical miles. The Act entered into force on 1 January 1977 (Annex 1).

37. The Bill was tabled in the Danish Parliament on 9 November 1976. Prior to the tabling of the Bill, a number of countries bordering on Danish, Greenland and Faroese waters had either extended their fishery zones to 200 nautical miles or announced that they would introduce legislation to that effect. In 1975 Iceland extended its fishery zone to 200 nautical miles, cf. paragraph 73. In August 1976 Canada had announced that a 200-mile fishery zone would be established as of 1 January 1977. The Norwegian Government had stated that it deemed an extension of the Norwegian fishery zone necessary prior to the end of 1976 and had on 3 September 1976 tabled in the Norwegian Parliament a bill on the establishment of an economic zone. The United States of America had also adopted an extension of the fishery zones to 200 nautical miles. The extension of the United States fishery zones became effective as of 1 March 1977.

38. This development of State practice made it necessary for Denmark to act. Following the establishment of 200-mile fishery zones by the United States of America, Canada, Iceland and Norway, the waters around Greenland and the Faroe Islands and the North Sea would be the only open fishing grounds of importance left in the North Atlantic Ocean. The situation could rapidly become critical to the fish stock if the international fishing fleet that had now been barred from fishing off the coasts of other countries could freely commence fishing in Danish, Greenland and Faroese waters. Such a scenario would be especially harmful to Greenland and the Faroe Islands as the populations of those territories are crucially dependent on the fishing industry. Consequently, in July 1976 and August 1976 respectively, the Provincial Council of Greenland and the Home Rule Authority of the Faroe Islands requested the Danish Government to effect an early extension of the fishery limits to 200 nautical miles. To avert such serious consequences to Danish, Greenland, and Faroese fishing interests as the extension of the fishery limits by the neighbouring countries might have caused, it was imperative to empower the Government of Denmark to extend the Danish fishery zone.

39. In 1976 the Norwegian Parliament passed Act No. 91 of 17 December 1976 relating to the Economic Zone of Norway (Annex 2). The Act empowered the Government of Norway to establish economic zones. Pursuant to this Act, the Government of Norway established by Royal Decree of 17 December 1976 a 200-mile economic zone for mainland Norway effective as of 8 January 1977.

40. By Order of 22 December 1976 the Greenland fishery zone was extended from 12 nautical miles to 200 nautical miles. The extension was effective from 1 January 1977. Off the west coast of Greenland the extension only applied up to 75° N and off the east coast of Greenland the extension only applied up to 67° N latitude.

41. The reasons for not extending the 200-mile fishery zone off the east coast north of 67° N were that such an extension might cause certain difficulties in relation to the delimitation of the fishery zone in the areas vis-à-vis Iceland and Jan Mayen, and also the relative paucity of fish stocks in those waters.

42. In September 1978 the Norwegian Minister of Foreign Affairs announced that the newly discovered prospects of capelin fishing in the waters around Jan Mayen had led the Government of Norway to consider the establishment of an economic zone around Jan Mayen.

43. In March 1979 the Government of Denmark learned that the Government of Norway and the Icelandic Government had initiated talks concerning maritime delimitation of the area between Iceland and Jan Mayen.

44. At the Session of the Nordic Ministers for Foreign Affairs held in Copenhagen on 29 – 30 March 1979 the Danish Minister for Foreign Affairs advised his Norwegian colleague that an equidistance line delimiting the waters between Greenland and Jan Mayen would not be acceptable to Denmark.

45. In June 1979 the Government of Denmark learned through the news media that the Norwegian Minister for Foreign Affairs had visited Iceland to discuss fishing in the waters between Jan Mayen and Iceland and the delimitation of those waters. In a letter of 3 July 1979 the Danish Minister for Foreign Affairs informed his Norwegian colleague that the Government of Denmark expected that no decisions would be made during the Norwegian – Icelandic talks that might prejudice Danish interests, including the maritime delimitation off East Greenland north of 67° N (Annex 3). In his reply of 4 July 1979 the Norwegian Minister of Foreign Affairs gave an assurance that the Norwegian side would make certain that during the negotiations with Iceland no decisions prejudicing Danish interests would be made (Annex 4).

46. At the end of August 1979 the Government of Denmark advised the Norwegian and Icelandic Governments that Denmark was considering an extension of the fishery zone off East Greenland

north of 67° N. The fact that large-scale fishing had taken place in the waters between Greenland, Iceland and Jan Mayen and that a considerable part of this fishing had taken place in an area within 200 nautical miles off East Greenland had led to such considerations.

47. During the Session of the Nordic Ministers for Foreign Affairs held in Reykjavik on 30 – 31 August 1979, the issue of the maritime delimitation of the areas between Greenland, Iceland, and Jan Mayen was discussed between the Danish Minister and the Norwegian Minister. The Norwegian Minister informed his Danish colleague that the experts in the Legal Affairs Division of the Norwegian Foreign Ministry did not think that the negotiations between Norway and Iceland would give rise to any delimitation problems in relation to Greenland since it was assumed that in the case of Greenland the median line principle should be applied. The Danish Minister emphatically refuted this erroneous conception. The Danish Minister stated that Greenland must not be treated less favourably than Iceland in relation to Jan Mayen or, to put it in another way, Norway should not expect to be compensated in a future delimitation with Greenland if it granted concessions to Iceland. The Danish Minister also stated that even if a median line between Jan Mayen and Iceland became the end result, it could not be taken for granted that the delimitation between Jan Mayen and Greenland could also be determined by application of the median line principle (Annex 5).

48. At the Session of the Nordic Ministers for Foreign Affairs in Helsinki on 27 – 28 March 1980, the Danish Minister advised his Norwegian colleague that in May or June 1980 Denmark would extend the fishery zone off East Greenland north of 67° N to 200 nautical miles. In order to avoid difficulties Denmark would not for the time being exercise jurisdiction beyond the median line in the area between Greenland and Jan Mayen.

49. By Executive Order No. 176 of 14 May 1980 and effective from 1 June 1980, Denmark extended Greenland's fishing territory north of 67° N from 12 nautical miles to 200 nautical miles. Article 1, paragraph 4, of the Order provided that until further notice the fishery jurisdiction would not be exercised beyond the median line between Greenland and Jan Mayen (Annex 6). The Order was issued pursuant to Act No. 597 of 17 December 1976 on the Fishing Territory of Denmark (Annex 1).

50. Subsequent to Denmark's extension of Greenland's fishery zone, Norway established by Royal Decree of 23 May 1980 and

effective from 29 May 1980, a 200-mile fishery zone around Jan Mayen (Annex 7). Article 2 of the Royal Decree provided that in relation to Greenland, the fishery zone should not extend beyond the median line. Vis-à-vis Iceland, however, the 200-mile fishery zone claimed by Iceland was recognized in Article 2 providing that the fishery zone around Jan Mayen would not extend beyond the line constituting the outer limit laid down in the Icelandic Law No. 41 of 1 June 1979, cf. paragraph 74.

51. In a Note Verbale addressed to the Danish Ministry of Foreign Affairs by the Norwegian Embassy in Copenhagen, the Government of Norway on 4 June 1980 reserved its position regarding the Danish 200-mile fishery zone in the area between Greenland and Jan Mayen. The Government of Norway held the view that according to customary international law, a country may not, in the absence of an agreement, extend its fishery zone beyond the median line in relation to another country. In addition, the Government of Norway stated that Norway would exercise jurisdiction in the entire area of the Norwegian fishery zone (Annex 9).

52. A response to the Norwegian Note was given by Note Verbale dated 9 June 1980 from the Danish Ministry of Foreign Affairs to the Norwegian Embassy in Copenhagen. The Note stated that in the opinion of the Government of Denmark, Jan Mayen constituted a special circumstance under international law. Therefore, the fishery zone around Jan Mayen could have no impact on the extent of Greenland's fishery zone. Consequently, the Government of Denmark reserved its position with regard to the Government of Norway's decision to establish a fishery zone around Jan Mayen covering waters within the Greenland 200-mile fishing limit. The Note stated that under international law Greenland's entire 200-mile fishery zone remained under Danish jurisdiction. The Government of Denmark maintained that the decision not to exercise jurisdiction beyond the median line between Greenland and Jan Mayen until further notice was made at a time when no extended fishery zone around Jan Mayen had been established, and that a new situation had arisen with the Government of Norway's decision to enforce the fishery regulations in the entire zone claimed by Norway. The Government of Denmark reserved the right to review its decision not to exercise sovereignty in the part of Greenland's fishery zone lying beyond the median line (Annex 10).

53. Following the exchange of notes, the two Governments initiated talks on the maritime delimitation between Greenland and Jan Mayen. The first meeting was held in Oslo on 3 – 4 December 1980, cf. paragraph 61.

THE INCIDENT

54. At the end of August 1981 the Norwegian Government announced that a Norwegian coastguard ship was sailing towards the disputed area with instructions to board Danish fishing vessels and hand over written warnings ordering the vessels to stop fishing and leave the Norwegian fishery zone. This led the Government of Denmark to decide that henceforth it would also exercise jurisdiction in the disputed area. A Danish inspection ship was sent to the area. By Executive Order, No. 437 of 31 August 1981, issued by the Government of Denmark, the temporary restraint in the exercise of Danish jurisdiction in the disputed area was rescinded (Annex 11).

55. On 31 August 1981, the Norwegian coastguard boarded two Danish fishing vessels, one of them from the Faroe Islands, which were fishing for capelin in the disputed area. The vessels were inspected and written warnings served on the captains (Annex 12).

56. In order to avoid a further escalation of the conflict, the Danish Minister for Foreign Affairs on 31 August 1981 advised the Government of Norway, through the Danish Ambassador to Norway, that the Government of Denmark was prepared to have the dispute settled by international arbitration.

57. The Danish Minister of Foreign Affairs and the Norwegian Minister of Foreign Affairs met on 1 September 1981 in Copenhagen to discuss the critical situation that had developed. The Norwegian Minister was sympathetic to the Danish proposal to have the dispute settled by international arbitration and stated that he would reflect upon the idea. The Ministers of Foreign Affairs agreed that before arbitration proceedings were initiated the two Governments would seek an amicable solution to the problem of delimitation through bilateral talks.

INTERIM ARRANGEMENT REGARDING MONITORING OF FISHING FOR CAPELIN

58. Following the meeting on 1 September 1981 between the Danish and the Norwegian Ministers of Foreign Affairs, a delegation of Danish civil servants met in Oslo on 7 September 1981 with their Norwegian colleagues in order to work out a provisional solution to the problems raised by the delimitation dispute. The Parties agreed to preserve status quo in the area in order to avoid an escalation of the situation. Inspection ships from both countries should show restraint. The Norwegian coastguard would still serve written

warnings on Danish, including Faroese, fishing vessels, but would not board the vessels for inspection purposes. The Parties agreed that this understanding would not prejudice the Parties' position during future talks on delimitation. The Parties, furthermore, agreed that the establishment of the total allowable catch (TAC) for capelin fishing and the allocation of quotas for capelin fishing would have to be placed on the agenda of the future talks among all Parties concerned.

59. In 1982 and 1983 fishing of capelin was brought to a complete stop in the area in order to ensure conservation of the fish stock, cf. paragraph 83.

60. In the summer of 1984 a mutual understanding was reached between the Parties to the effect that in the disputed area each Party would enforce its regulations only upon its own vessels and upon vessels from third States that had not been granted a licence by the other Party. Both Parties would refrain from enforcing these regulations on the other Party's vessels and on third State vessels holding lawful licences. Licences granted by both Parties to third State vessels should also apply in the disputed area (Annex 13). This arrangement concerning regulation of the capelin fishing has been applied each year since 1984.

Talks on the Delimitation Dispute

61. As mentioned in paragraph 53 the first meeting between the Parties concerning the maritime delimitation in the waters between Greenland and Jan Mayen was held in Oslo on 3-4 December 1980. During nearly a decade the Parties held a series of meetings and had a number of informal contacts in order to try to solve the dispute. However, all attempts to reach an agreed settlement have been fruitless.

62. At the meeting on 3-4 December 1980 the Parties gave accounts of their views and the legal rationale underlying these views. The legal aspects of the talks centred on the delimitation rule contained in Article 6 of the 1958 Geneva Convention on the Continental Shelf seen in the context of later developments in State practice, in the case law of the International Court of Justice and arbitral tribunals as well as in the field of the on-going codification efforts concerning the Law of the Sea (UNCLOS III). The meeting produced no rapprochement between the Danish claim for a distance criterion of 200 nautical miles and the Norwegian claim for a median line.

63. The next meeting was held on 25 May 1981 in Copenhagen. The Parties reiterated their views put forward at the December 1980 meeting and agreed to resume the talks at a later date. At the following meeting in Copenhagen on 15 December 1981 the only items on the agenda were the arrangements for future talks and a modus vivendi for 1982.

64. The next meeting was held in Oslo on 27 January 1983. The Parties concluded that a continuation of the talks would be futile, and that the matter had to be submitted to the Ministers of Foreign Affairs.

65. At a meeting on 10 June 1983 in Paris the Danish Minister of Foreign Affairs advised the Norwegian Minister of Foreign Affairs that Denmark was still willing to have the dispute on the delimitation submitted to international arbitration.

66. Renewed talks between representatives of the Ministries of Foreign Affairs took place in Copenhagen on 19 August 1983.

67. On 6 January 1984 Norwegian and Danish civil servants met again in Oslo. Neither this meeting nor subsequent meetings in Copenhagen on 4 June 1984 and 6 June 1985 and in Oslo on 29 January 1986 brought the Parties closer to a settlement of the dispute.

68. During the autumn of 1986 Denmark urged for fixing the date of a meeting with a view to making a last attempt for a full and substantive exchange of all viewpoints involved in the settlement of the dispute. On 15 January 1987 a preliminary meeting was held in Copenhagen. At this meeting the Parties went over all the aspects involved in the delimitation of the continental shelf and the fishery zones in the area. They agreed upon the agenda of a meeting scheduled for 23 – 24 April 1987.

69. At this meeting, which was also held in Copenhagen, the Parties exchanged their views on the delimitation of the fishery zones and the continental shelf areas. They did not reach any solution but agreed to pursue the matter further at a meeting in Copenhagen on 29 June 1987, but also that meeting remained inconclusive. The Parties realized that the possibilities of reaching a negotiated settlement between the civil servants had now been exhausted.

70. The matter was therefore once again referred to discussion between the two countries' Ministers of Foreign Affairs. Talks between the two Ministers were, however, also fruitless.

71. On 7 – 8 April 1988 negotiators of both countries opened talks in Copenhagen on the possibilities of settling the delimitation dispute by arbitration. The talks on a possible settlement by arbitration were resumed at meetings on 20 May 1988 in Oslo and 21 June 1988 in Copenhagen. These talks did not lead to any result and no further meetings were scheduled.

*

72. Against this background and with a view to obtaining, eventually, a final settlement of the dispute the Danish Government decided to institute proceedings before the International Court of Justice.

Iceland's Maritime Delimitations and the Norwegian-Icelandic Agreement Concerning Fishery and Continental Shelf Questions

73. By Regulations of 15 July 1975 Iceland extended its fishery zone to 200 nautical miles (Annex 14). Where the distance to Greenland and to the Faroe Islands is less than 400 nautical miles the fishery limits were established as equidistance lines. Towards Jan Mayen, where the distance is less than 400 miles, a full 200-mile zone was claimed by Iceland, but until further notice jurisdiction was not to be exercised in the area outside the equidistance line.
The Government of Denmark disputed, as it still does today, some of the points determining the drawing of baselines in the Icelandic Regulations. In a Note delivered on 23 October 1975 by the Danish Embassy in Reykjavik to the Icelandic Ministry of Foreign Affairs, the Government of Denmark, therefore, reserved its position with respect to equidistance lines drawn on the basis of those baseline points.
The Norwegian reaction to Iceland's extension of its fishing limits was one of strong protest. In a Note, dated 5 September 1975, the Government of Norway informed the Icelandic Government of its view that the equidistance principle should apply not only towards the Faroe Islands and Greenland but also towards Jan Mayen.

74. By Law No. 41 of 1 June 1979 concerning the Territorial Sea, the Economic Zone and the Continental Shelf (Annex 15), Iceland established a 200-mile economic zone. The Act contained no provision corresponding to the provision in the Regulations of 15 July 1975 concerning non-enforcement of jurisdiction beyond the

equidistance line towards Jan Mayen. Towards the Faroe Islands and Greenland the economic zone was delimited by the equidistance line.

75. The Norwegian – Icelandic dispute on fishing rights in the waters between Jan Mayen and Iceland was settled by an Agreement of 28 May 1980 concerning Fishery and Continental Shelf Questions. The Agreement entered into force on 13 June 1980 (Annex 16).

76. In the preamble to the Agreement the Norwegian Government and the Icelandic Government recognize *inter alia* that the economy of Iceland is overwhelmingly dependent on fisheries, cf. Article 71 of the draft convention before the Conference on the Law of the Sea. The preamble of the Agreement further evidences the Norwegian Government's acceptance of an Icelandic 200-mile economic zone in the area between Iceland and Jan Mayen.

77. The Agreement provides for joint management by Norway and Iceland of the fish stocks in the waters around Jan Mayen, *inter alia* by establishing a joint fisheries commission. The Agreement also regulates the fishing for capelin in the area, establishing procedures for the annual fixing of total allowable catch (TAC) and allotment of quotas to the two countries. For more details on the capelin aspect of the Agreement, cf. paragraph 80.

78. The Agreement does not lay down a continental shelf boundary in the area between Iceland and Jan Mayen, but provides for the establishment of a Conciliation Commission empowered to submit recommendations to the Governments of Norway and Iceland regarding the dividing line for the shelf area between Iceland and Jan Mayen[6]).

---

[6]) *The Conciliation Commission was established on 6 August 1980. In its report delivered in May 1981 to the Governments of Iceland and Norway it recommended to the two Governments that the dividing line between the two countries' sections of the continental shelf in the area between Iceland and Jan Mayen should be the same as the dividing line for the economic zones. The Commission also recommended that co-operation should be established between the two countries for research and exploitation of petroleum deposits in a specific area between Iceland and Jan Mayen on both sides of the dividing line, the Joint Venture Area. The report of the Conciliation Commission formed the basis of the Agreement between Norway and Iceland on the Continental Shelf in the Area between Iceland and Jan Mayen, concluded between the Norwegian and Icelandic Governments on 22 October 1981 (Annex 28).*

79. The fishing of capelin in the area around Jan Mayen which started in 1978 has accentuated the importance of drawing a final delimitation line also between Greenland and Jan Mayen.

80. In the Agreement of 28 May 1980 concerning Fishery and Continental Shelf Questions Norway and Iceland established a procedure for the biannual establishment of the total allowable catch (TAC) of capelin in the maritime areas between Iceland and Jan Mayen. The two countries agreed to distribute the capelin stock between themselves in the ratio of 15:85. The agreement did not provide for capelin fishing by vessels from Member States of the European Economic Community (EEC).

81. In 1982 marine biological reports on a serious decline in the capelin stock led to trilateral talks between the EEC, Iceland, and Norway in Brussels. At that time Greenland was still a member of the EEC, cf. paragraphs 139 – 144.

82. The trilateral talks were complicated by the Agreement between Norway and Iceland on the distribution between them of the capelin stock in the ratio of 15:85.

83. On 18 August 1982, the EEC, Iceland, and Norway agreed for purposes of conservation to bring the fishing of capelin to a complete stop for the period 1 July 1982 to 30 June 1983. The Parties further agreed to form a working group with the objective of establishing the terms for joint management of the capelin stock and a permanent ratio for the allocation of capelin quotas.
By agreement between the EEC, Iceland and Norway the complete ban on capelin fishing was extended to the fishing season from 1 July 1983 to 30 June 1984.

84. In early 1984 the capelin stock had multiplied and marine biologists advised the Parties that capelin fishing could be resumed. Pursuant to the trilateral Agreement of 18 August 1982 the EEC, Iceland and Norway met on 8 – 9 May 1984 in Bergen, Norway, to discuss a permanent ratio for sharing the capelin stock and the fixing of a joint trilateral TAC for the fishing season 1984 – 1985. However, the Parties to the capelin talks were unable to agree on either issue.

85. Following the Bergen talks Norway and Iceland held a meeting pursuant to the Agreement of 28 May 1980. The two countries agreed on an Icelandic – Norwegian capelin TAC for the fish-

ing season from 1 June 1984 – 30 June 1985 in the well known ratio of 85:15. As in the earlier Icelandic-Norwegian agreements the EEC was not allotted a capelin quota. Thus the EEC was left with no choice but to establish unilaterally an EEC capelin quota for the fishing season 1984 – 1985.

86. At the Session of the Nordic Ministers for Foreign Affairs on 4-5 September 1984, the Danish Minister of Foreign Affairs advised his Norwegian and Icelandic colleagues that Danish participation in the talks and in the possible conclusion of agreements on the catching of capelin was contingent on the non-prejudicial effect of this participation on the maritime delimitation between Greenland and Jan Mayen. The three Ministers of Foreign Affairs agreed to initiate talks between Greenland/Denmark, Iceland, and Norway on the allocation of capelin quotas for the fishing season 1984 – 1985 as soon as possible.
It was then known that Greenland would withdraw from the European Communities in early 1985, cf. paragraph 144. Following Greenland's withdrawal from the European Communities, Greenland/Denmark became a direct party to the talks with Iceland and Norway on the fishing of capelin.

87. Greenland, Iceland and Norway met for capelin talks on 15-17 April and 26-28 June 1985. The Parties agreed on a tentative TAC for the fishing season from 1 August 1984 to 31 July 1985. The Parties however, were unable to agree on a ratio for sharing the capelin TAC.
A report on the biological key for quota sharing of capelin in the Icelandic-Greenland-Jan Mayen area submitted in the summer of 1985 by a joint working group of the EEC, Iceland, and Norway did not bring the Parties together on the size of the quotas appertaining to the three Parties. At the closure of the talks in June 1985 the Parties presented their final claims for capelin quotas: Iceland claiming 80 per cent. of the TAC, Norway 13 per cent., and Greenland 11 per cent.

88. At a meeting on capelin quotas held in Copenhagen on 16 – 17 April 1986, Greenland suggested an arrangement according to which Greenland and Norway should jointly share more than 35 per cent. of the TAC. The Parties did not come to terms on permanent ratios for sharing the capelin stock but they were able to agree on a joint capelin TAC for the period from 1 August 1986 to 30 November 1986.

89. In 1987 no trilateral meetings were held on the allocation of capelin quotas, but talks were resumed in Reykjavik on 14 May 1988. The Parties did not come to terms at these talks either.

90. Five months after Denmark had initiated proceedings before the International Court of Justice in the present case, representatives of Greenland, Iceland and Jan Mayen on 20 January 1989 agreed on a draft agreement on joint management of the capelin stock. The Agreement between Greenland/Denmark, Iceland and Norway on the Capelin Stock in the Waters between Greenland, Iceland and Jan Mayen was signed by the Parties in Copenhagen on 12 June 1989. The Agreement provides for sharing the capelin TAC between Iceland, Norway and Greenland in the ratio of 78:11:11. The Agreement also provides for a procedure for the biannual establishment of the capelin TAC and for mutual fishing and landing rights inside the other Parties' zones. The Agreement is valid for the fishing seasons from 1 July 1989 until 30 April 1992 (Annex 17).
During the negotiations leading to the Agreement, Iceland and Norway suggested that the Agreement should be valid for a longer period of time. This was not acceptable to Greenland. One of the explicitly stated reasons was the Greenland wish to be able to negotiate a new agreement on the basis of the Court's decision in the present case.

91. The Agreement does not affect the need for a delimitation. When discussions on its renewal begin, Greenland will be in exactly the same position as in the previous discussions if no delimitation has been effected. For, lacking a clear delimitation line, Greenland is unable to argue for an allocation of the catch which matches the size of the maritime area to which Greenland is entitled by law.
Furthermore, there are practical difficulties which only a delimitation will remove. The interim arrangement regarding monitoring of fishing for capelin (Annex 13) is unsatisfactory to the extent that it allows dual jurisdiction in the disputed area and precludes Greenland from monitoring or controlling vessels licensed by Norway to operate in a substantial area within Greenland's 200-mile zone.
A final delimitation would also enhance Greenland's possibilities of enacting proper conservation and management measures concerning the fish stock in the area.

CHAPTER II.

GREENLAND

Section 1. History and Constitutional Status

A. History

Immigration

92. The history of the Greenland people is characterized by seven waves of immigration, followed by a colonial period of some immigration.

93. Greenland and the main place names mentioned in this Chapter are shown on Map III, annexed to this volume.

94. The first immigration known to archaeologists took place about 2500 B.C. when a group of palaeo-Eskimo hunters set out from the easternmost part of North Canada across the narrow straits to the northernmost part and later the east coast of Greenland (Independence I culture).

95. In the second wave, which also started from Canada, presumably immediately after the first one, the immigrants were also palaeo-Eskimo hunters. Contrary to the first immigrants they spread south along the west coast (Saqqaq culture).

96. About 1000 B.C. a third group arrived from North Canada. Like the first immigrants they moved northeastward and then southward round the coast (Independence II culture).

97. Shortly thereafter yet another group of people, presumably of the same ethnic origin, entered Greenland by the same approaches but they went south across Melville Bay and down the west coast (Dorset culture).

98. About AD 900, still by the same routes from present-day Canada, came the vanguard of the people who were to take possession of Greenland in both east and west (Thule culture). They later named themselves *Kalaallit* and became the ancestors of the people inhabiting modern Greenland. In Greenlandic the country is called *Kalaallit Nunaat.*

99. In 985 a group of people from Iceland settled in the south-west part of Greenland. In order to attract more settlers from

Iceland, these Norse peasants of Viking culture named the country 'Greenland'. Thus, the south-west part of Greenland was a part of the European-Nordic cultural region throughout the Middle Ages. The Norsemen in Greenland had become extinct at the end of the 15th century.

100. The last immigration from Canada took place during the period about 1700 – 1900. The immigrants were polar Eskimos who now inhabit the Thule district.

101. In 1721 the King of Denmark sent an expedition to Greenland to re-establish connection with the Norsemen there, not knowing that they had become extinct. Unable to accomplish the task assigned to it, the expedition assumed Lutheran missionary work among the Eskimos in West Greenland and established a trading post in the district. This marked the advent of a colonial period which lasted until 1953.

The North-East Greenland Community

102. North-East Greenland, i.e., the area between what today is known as Peary Land and Scoresbysund, and which includes the area between the 70° and 76° N latitudes relevant to the present dispute, has been inhabited for several thousand years, presumably the longest continuous period of habitation in Greenland. Here remains of the Independence I culture have been found, e.g. in Peary Land dated to approximately 2500 B.C.
Remains of large settlements belonging to later cultures have now been found on Ile de France, around Dove Bay, and as far south as at Cape South in Scoresby Sound Fiord. The total number of former settlements that have been found in North-East Greenland is close to three hundred, leaving no doubt that the population of this area was at times relatively large.

103. North-East Greenland has thus been populated and its natural resources exploited over a time span of some 4500 years.

The Colonial Period

104. In the centuries following 1721, Denmark established altogether 16 settlement districts in Greenland. This process was peaceful and without any armed conflict between Denmark and the aboriginal population. Denmark did not exercise authority over the administration of wildlife resources (marine mammals, fish and birds), which since ancient times had been managed by the hunters

themselves by way of prescriptive rights which various settlements and families had gained with respect to specific hunting and fishing areas.

105. Culturally, a salient feature of the period was the effort to create a written language which could turn the West Greenland dialect of the principal Eskimo language into a usable tool in modern Greenland. Analphabetism was practically eliminated in the 19th century.

106. An important event took place when the Permanent Court of International Justice on 5 April 1933 passed judgment in the case concerning the *Legal Status of Eastern Greenland* (P.C.I.J. 1933 Series A/B, No. 53). The dispute arose out of the action of Norway in proclaiming on 10 July 1931 the occupation of a zone of Eastern Greenland between latitudes 71°30' and 75°40' N. Denmark responded by instituting proceedings with the Court asking it to declare the Norwegian proclamation invalid on the ground that the area to which it referred was subject to Danish sovereignty, which extended to the whole of Greenland. The Court held that there was sufficient evidence to establish Denmark's title to the whole of the country. The area which Norway had claimed was therefore not *terra nullius* capable of being acquired by her occupation.
The maritime area which is now in dispute lies off the coast of that part of Eastern Greenland which was the subject of the Court's ruling in 1933.

107. During the Second World War connections with Denmark, which was occupied by German troops, were temporarily cut off.

108. In 1946 the Danish Government listed Greenland as a non-self-governing territory with the United Nations under Article 73 of the Charter of the United Nations, thereby formally acknowledging Greenland's colonial status. In the period of 1946 – 1953 Denmark submitted annual reports to the United Nations on the administration of Greenland pursuant to Article 73 e of the Charter.

B. Constitutional Status

Greenland's Status Prior to the Enactment of the Revised Danish Constitution in 1953

109. Greenland was a Danish colony up to the enactment of a revised Danish Constitution in 1953. The constitutional separation of powers did not apply to Greenland prior to 1953, and Greenland

was ruled by the Danish Government mainly through administrative government orders. There were no Greenland representatives in the Danish Parliament, the *Rigsdag*.

110. The seat of the governmental administration of Greenland was in Copenhagen with local representatives in Greenland. From 1908 the Greenland population participated in the administration through the two popularly elected Provincial Councils, one for Northern, the other for Southern Greenland, (the *Landsråd).* In 1950 the two Provincial Councils were merged.

111. The Provincial Council was empowered by the *Rigsdag* to issue administrative orders and decisions in certain, specified spheres of the Greenland society. Additionally, the Provincial Council had an advisory role to the *Rigsdag;* bills affecting Greenland affairs were submitted to the Provincial Council for comments before being passed into law.

THE PERIOD FROM 5 JUNE 1953 TO 1 MAY 1979

112. In 1952, the popularly elected Provincial Council opted for Greenland's integration with equal rights into the Danish Realm in lieu of continued colonial status by approving a proposed constitutional revision extending the applicability of the constitution to Greenland. Underlying the decision of the Provincial Council was the belief that only freeing Greenland from its colonial status through integration into the Danish Realm could secure the Greenland population greater influence on domestic affairs.

113. On 5 June 1953 a revised Danish Constitution was passed. Section 1 of the Constitution provides that the Constitution shall apply to all parts of the Danish Realm.
Greenland's colonial status was thus ended through full integration into the Danish Realm. Greenland was given no special constitutional position within the Realm except that the Constitution secured the Greenland population two out of the 179 seats in the newly established single-chamber Danish Parliament, the *Folketing*. By virtue of its general scope of application the Constitution put the Greenland population on an equal footing with the Danes and the Faroese.
Parliamentary Acts passed by the *Folketing* now applied directly to Greenland unless expressly limited in geographical scope.

114. The advisory and executive competence of the Provincial Council was extended considerably in the following period, but con-

stitutionally, Greenland in effect enjoyed no higher or lower degree of self-government than other parts of Denmark, except for the Faroe Islands which gained Home Rule in 1948.

115. By Resolution 849, the General Assembly of the United Nations in 1954 approved the constitutional integration of Greenland into the Danish Realm and deleted Greenland from the list of non-self-governing territories.

116. Segments of the Greenland population were not satisfied with the way colonialism came to an end in Greenland. Denouncing integration into the Danish Realm they advocated increased autonomy with self-government for Greenland.
Aspirations for increased autonomy in Greenland ranging from the introduction of a Home Rule system similar to the Faroese to full political and economic self-determination through secession from the Danish Realm were voiced with growing intensity in the 1960s and 1970s.
Important political issues such as the Greenland demand for an extension of the fishery zone, Greenland's association with the European Communities, and granting of concessions for exploitation of the natural resources of Greenland spurred a political mobilization of the Greenland population in the 1970s. Coupled with a growing Greenland consciousness this political mobilization underscored the Greenland desire for wider participation in decision-making processes.
In the mid-1970s Greenland witnessed the birth of the first political movements from which the present political parties have developed, clearly distinguishable by their views on Greenland's association with the Danish Realm as well as their political colour.

Home Rule in Greenland

117. In 1972, the Provincial Council recommended to the Danish Government that the issue of granting the Provincial Council increased influence upon and joint responsibility for the development of Greenland be studied.

118. A Commission on Home Rule in Greenland composed of Greenland and Danish politicians was established by the Danish Government. On the basis of the recommendations and proposals of this Commission, the *Folketing* passed the Greenland Home Rule Act No. 557 of 29 November 1978 (Annex 18).

119. By a referendum held in Greenland on 17 January 1979 a large majority of the population of Greenland approved the coming into force of the Act; 70 per cent. of the votes cast favoured the introduction of Home Rule in Greenland which became effective as of 1 May 1979.

HOME RULE POWERS

120. Greenland Home Rule is an extensive type of self-government. By the Greenland Home Rule Act the Danish Parliament, the *Folketing*, has delegated legislative and executive powers to the Home Rule Authority, consisting of the popularly elected legislative Greenland Assembly, the *Landsting*, and the executive branch, the *Landsstyre*, elected by the *Landsting*. Presently, the *Landsting* has 27 members and the *Landsstyre* has 5 members.
The powers transferred by statute are in principle identical to the powers exercised by the central authorities of the Realm in other parts of Denmark. Consequently, the *Folketing* and the Danish Government refrain from enacting legislation and exercising administrative powers in the fields where these powers have been transferred to the Home Rule authorities.

121. The Home Rule Act provides that the Home Rule Authority may request that a number of fields specified in a Schedule annexed to the Act be transferred to Home Rule, cf. Section 4 of the Act. The list of functionally defined, transferable fields contained in the Schedule is not exhaustive; however, transfer of legislative and executive powers in fields other than those listed in the Schedule is subject to prior agreement between the Home Rule Authority and the central authorities of the Realm, cf. Section 7 of the Home Rule Act.

122. During the ten years that have elapsed since the establishment of Home Rule in 1979, the Home Rule Authority has almost exhausted the list in the Schedule and thus assumed authority in most aspects of life in Greenland. Out of the 17 fields listed in the Schedule, the more important ones in which transfer has taken place include *inter alia:* The organisation of the Home Rule system; taxation; regulation of trade, including fisheries and hunting; education; supply of commodities; transport and communications; social security; labour affairs; housing; environmental protection and conservation of nature.
The health service is the one field of major importance in the Schedule that has yet to be transferred to Home Rule. The survey in

Annex 19 may be consulted for further details regarding matters transferred to Greenland Home Rule and dates of transfer.

123. The number of Acts *(Landstingslove)* passed and Statutory Orders *(Landstingsforordninger)* issued by the *Landsting* since the introduction of Home Rule on 1 May 1979 until 31 December 1988 runs to about 200.

Procedures for the Transfer of Powers to Home Rule

124. Greenland Home Rule rests on the basic principle that legislative power and the power of the purse should not be divided. Consequently, Section 4(2) of the Home Rule Act provides that when the *Folketing* transfers a field to Home Rule, the Home Rule Authority must assume the inherent expenses. Conversely, the Home Rule Authority is the sole beneficiary of taxes and revenue generated in fields transferred to Home Rule.

125. Since Greenland self-financing is not yet possible in a number of capital-intensive fields an instrument has been created in the Home Rule Act to facilitate transfer of powers to Home Rule in fields requiring Danish subsidies.
According to Section 5(1) of the Act the *Folketing* may by statute effect a transfer of authority and the subsidies to be paid in such fields through vesting the Home Rule with the power to issue Statutory Orders within a subsidized field. The *Folketing* passes, upon consultation with the Home Rule Authority, an Enabling Act specifying the competence transferred to Home Rule and establishing a framework in the form of a few fundamental principles for each field while leaving it to the Home Rule authorities to decide the more detailed regulations and undertake the administration of the said field.
Whereas a legislative initiative in a field transferred under Section 4 of the Act takes the form of an Act passed by the *Landsting*, the Home Rule Authority confines itself to issuing Statutory Orders under Section 5.

126. The Danish subsidies to the Home Rule Authority are not earmarked for specific purposes but granted as a lump sum. Thus, the Home Rule Authority has virtually complete freedom to determine the order of priority for expenditure of the funds allocated by the *Folketing*. The Danish block grants are fixed by Acts of the *Folketing* for three-year periods, and the amount is provided for

annually in the Danish Budget. The 1989 block grant to the Greenland Home Rule Authority amounts to well over DKK 1,500 million, equivalent to approximately USD 194 million[7]).

Unity of the Realm and Constitutional Limits to Home Rule

127. The Home Rule Act has not altered Greenland's constitutional status as a part of the Danish Realm.

128. The constitutional principle of the national unity of the Realm, derived from Section 1 of the Danish Constitution and expressed in Section 1 of the Home Rule Act, sets certain limits to the scope of Greenland Home Rule: sovereignty continues to rest with the central authorities of the Realm; Greenland remains a part of the Danish Realm; only fields appertaining exclusively to Greenland may be transferred to Home Rule; the delegation of powers cannot be unlimited and must be precisely defined by statute; certain fields, the so-called affairs of State, may not be transferred to Home Rule. These exclusive affairs of State include *inter alia:* external relations, defence policy, financial and monetary policy, the administration of justice.

129. However, with respect to non-transferable and non-transferred fields, the Home Rule Authority has an important advisory function to the central authorities of the Realm. Proposed legislation exclusively addressing Greenland affairs must be submitted to the Home Rule Authority for comments prior to the introduction of the bill in the Danish *Folketing*, cf. Section 12(1) of the Home Rule Act. Where proposed legislation is "of particular importance to Greenland" the Home Rule Authority must be consulted before it is put into effect in Greenland, cf. Section 12(3) of the Home Rule Act.

Greenlandization

130. With the introduction of Home Rule an intensive process of "Greenlandization" commenced. The autonomy of Greenland was symbolized by the bringing into existence of an official Greenland flag and coat of arms. The Home Rule Authority has made and is making great efforts to preserve the Greenland culture and heritage. The language is of vital importance and Section 9 of the Home Rule Act proclaims Greenlandic to be the principal language in

[7]) *Throughout the Memorial figures in Danish Kroner have been converted into US Dollars on the basis of the rate of exchange on 1 June 1989 when 100 US Dollars (USD) equalled Danish Kroner (DKK) 772.25.*

Greenland. In 1983 the university-level Inuit Institute was established in Nuuk, the capital of Greenland, where linguists are modernizing Greenlandic in order to meet the needs created by the development of Greenland.

131. The new Greenland consciousness has also found international forms of expression. Greenland representatives have often assumed a leading role in the cultural and political Fourth World conferences on issues relating to ethnic minorities. One example is the Inuit Circumpolar Conference, a pan-Eskimo non-governmental organization that acquired NGO status under the auspices of the United Nations in 1983.

132. In 1985 Greenland was admitted to the Nordic Council as a member of the Danish delegation. The Nordic Council is a parliamentary and governmental organ of co-operation among Denmark, Finland, Iceland, Norway, and Sweden.

Greenland and Danish Foreign Policy

133. The power to conduct foreign policy is a constitutional prerogative of the Danish Government, and no part of this prerogative may be transferred to Greenland Home Rule, cf. Section 11 of the Home Rule Act.
However, the Home Rule Act has created co-operative procedures serving to accommodate the interests of Greenland and to alleviate potential conflict of interests between Greenland and Denmark in matters of foreign policy by granting the Home Rule Authority a number of important functions of an advisory, representative and executive nature.

134. Extensive legislative and executive powers, territorially as well as functionally defined, have been transferred to Home Rule. Consequently, the co-operation of the Home Rule Authority will often be necessary to fulfil Denmark's international obligations. Accordingly, the Home Rule Act provides that the Danish Government must consult the Home Rule Authority before entering into treaties that particularly affect Greenland interests, cf. Section 13 of the Home Rule Act. This consultative procedure applies whether or not the treaty concerns a transferred field.

135. International treaties concluded by the Danish Government and customary international law bind the Home Rule Authority to the same extent as they do the Government of Denmark. In order to ensure that Denmark and Greenland comply with their in-

ternational obligations, the Danish Government may direct the Home Rule Authority to take the necessary steps to fulfil such obligations, cf. Section 10 of the Home Rule Act.

136. Legislative and administrative orders of the Home Rule Authority, e.g., concerning regulation of fisheries, may affect third State interests and the position of the Danish Government vis-à-vis other countries. Under the Act the Home Rule Authority is, therefore, under obligation to consult the central authorities of the Realm before introducing measures that might prejudice Denmark's interests, cf. Section 11(2) of the Home Rule Act.

137. The Home Rule Authority may send representatives to Danish diplomatic missions in order to safeguard important commercial interests of Greenland, cf. Section 16(1) of the Home Rule Act.

138. Although, in principle, treaty-making powers are vested exclusively in the Danish Government, the central authorities of the Realm may, upon request, authorize the Home Rule Authority to conduct, with the assistance of the Foreign Service, international negotiations on purely Greenland affairs, cf. Section 16(3) of the Act. The Home Rule Authority has notably availed itself of the right to conduct bilateral negotiations in connection with the conclusion of fishery agreements.

Greenland and the European Communities

139. Denmark's membership of the European Communities (EC) was effected by accession to the Treaties establishing the European Communities. Denmark's membership included Greenland as a part of the Danish Realm.

140. In the referendum held in October 1972 on Denmark's proposed membership of the EC approximately 70 per cent. of the votes cast in Greenland opposed Denmark's accession.

141. Greenland's capacity under international treaty law to unilaterally withdraw from the EC once Home Rule had been established was a matter of concern and debate during the preparations for Home Rule. Since the treaty-making power under Home Rule would remain with the Danish Government, Greenland's withdrawal from the EC would be contingent upon the co-operation of the central authorities of the Realm.
Prior to the introduction of Home Rule the Danish Prime Minister

declared that the Danish Government did not wish to force upon the Greenland Home Rule Authority any particular association with the EC.

142. The introduction of Home Rule in Greenland in 1979 did not *per se* alter Greenland's position within the EC. The legal acts of the EC continued to apply to Greenland and the special arrangements made with respect to Greenland's fishery rights remained valid. Similarly, Home Rule did not change the division of legislative and representative powers between the EC and the central authorities of the Realm.

143. In a referendum held in Greenland in 1982, a majority of the electorate opted for Greenland's withdrawal from the EC. The Danish Government subsequently reaffirmed its commitment to support Greenland's decision to withdraw.

144. The negotiations on Greenland's withdrawal from the EC and the subsequent agreements between the EEC and Denmark/Greenland commenced in 1982. On the basis of a Treaty amending, with regard to Greenland, the Treaties Establishing the European Communities (Annex 20), concluded on 13 March 1984 by the Member States, Greenland's withdrawal from the EC became effective from 1 February 1985.

145. Upon withdrawal Greenland was accorded Overseas Countries and Territories (OCT) status under Part four of the Treaty establishing the European Economic Community. The OCT status of Greenland is reflected in the Protocol on the Special Arrangement for Greenland linked to the 13 March 1984 Treaty on Greenland's withdrawal from the EC. Greenland produce falling under the common market scheme for fisheries produce may be imported to the EEC exempt from duty and quantitative restrictions. This favoured status is, however, explicitly contingent upon the conclusion of an agreement between the EEC and Denmark/Greenland granting EC Member States satisfactory access to the fishery zones of Greenland.
In accordance with the Protocol, a ten year Agreement on Fisheries was concluded on 13 March 1984 between the EEC, on the one hand, and the Government of Denmark and the Home Rule Authority of Greenland, on the other (Annex 21). Recognizing in its preamble the vital importance of the fishing industry to the economy of Greenland, the Agreement lays down the principles for EEC fishing in the fishery zones of Greenland, cf. paragraph 177.

Section 2. Population

146. As of 1 January 1989 the population of Greenland numbered 55,171[8]).
Four fifths of the people inhabiting Greenland are Inuit (Eskimos). The last fifth represents predominantly Danes, most of whom stay in Greenland for a comparatively short period carrying out work for which there is a shortage of qualified personnel in Greenland.

147. At the start of the 20th century the population of Greenland numbered about 12,000. This figure doubled during the first half of the century. Since 1950 the population has doubled in only 20 years. Especially in the 1960s the growth rate was remarkably high. In the period from 1950 to 1970, the Greenland society had to adapt itself to an annual population growth of 3.5 per cent. To meet this challenge substantial investments were required, especially in order to provide increased occupational opportunities. In 1988 the rate of population growth was 1.2 per cent., but it is not expected to remain at this reduced level. Forecasts in March 1989 suggest a rise in population to 61,000 in the year 2000. Due to this development the Greenland Home Rule Authority will still have to provide training and jobs for the increasing population within the working age group.

148. Eighty per cent. of the Greenland population live in the western part of Greenland, extending from Disko Bay in the north to Cape Farewell in the south. This is because the waters off this stretch of coast are heated by the North Atlantic Current and are thus practically ice-free all year round.
The remaining part of the Greenland population lives in the hunting regions of North-West Greenland (approximately 14 per cent.) and East Greenland (approximately 6 per cent.).
In East Greenland the population growth in the Ammassalik district at the start of this century generated a demand for renewed utilization of hunting regions which had previously been abandoned. This led to the foundation of the Scoresbysund settlement in 1925 by hunters moving in from the Ammassalik district.
As of 1 January 1989, 3,425 persons lived in East Greenland, 2,861 in the municipality of Tasiilaq (Ammassalik) and 564 in the municipality of Ittoqqortoormiit (Scoresbysund).

---

[8]) *The size of the Greenland population may be compared with the populations of a number of independent States, e.g., Nauru (8,042 in 1983), Tuvalu (8,229 in 1985), St. Christopher and Nevis (47,000 in 1987), Kiribati (66,250 in 1987) and the Seychelles (67,000 in 1987). Some of these States are members of the United Nations. Source: Statesman's Year-Book, 1988.*

Section 3. Geography, Geology and Climate

A. Geography

149. Greenland covers an area of approximately 2,200,000 square kilometres of which about 1,858,000 square kilometres are covered by an ice cap. The remaining 342,000 square kilometres are ice-free land.

150. Greenland's northernmost point (excluding two tiny islands) is Cape Morris Jesup, which is situated at latitude 83°39'N, only 380 nautical miles from the North Pole. The southern tip, Cape Farewell, lies at 59°46'N, which is about the latitude of Oslo and Stockholm. Greenland thus extends from north to south over about 24 degrees of latitude, a distance of 2,670 kilometres.

151. Greenland's westernmost point is the westernmost of the Carey Islands, situated at 73°15'W. The easternmost point is Nordostrundingen, 11°21'W. At its widest, Greenland measures more than 1,300 kilometres from east to west.

152. The coastline of Greenland is estimated to be about 40,000 kilometres long, when one takes into account the shorelines of the hundreds of fiords, among them the Scoresby Sound Fiord complex, the world's largest network of fiords. Behind the rugged coast, which in many places is fringed by innumerable rocks and islands, there is a belt of ice-free land which is at its widest, about 300 kilometres, in the area west and north-west of Scoresbysund in East Greenland, while in West Greenland north of Sisimiut (Holsteinsborg) it reaches a width of 180 kilometres. Most of the coastal area of Greenland is mountainous; the highest point in Greenland is the 3,733 metres high summit of Mount Gunnbjørn, which lies between Ammassalik and Scoresbysund.

B. Geology

Geology of the Onshore Area

153. Greenland was once part of a vast megacontinent known as Laurasia, which included most of North America, Greenland, Europe north of the Alps, and Asia north of the Himalaya. The breakup of this megacontinent, which ultimately led to the formation of the North Atlantic Ocean, the Norwegian Sea, the Greenland Sea, the Labrador Sea, Davis Strait and Baffin Bay, began about 250 million years (m.y.) ago, and Greenland finally became a separate continental entity about 55 m.y. ago.

154. The rocks making up Greenland range in age from some of the oldest continental crustal rocks known to the recent deposits by glaciers and melt water rivers. The major part of Greenland belongs to a Precambrian shield or craton (a geologically old and stable area) built up of more than 2500 m.y. old crystalline rocks. To the north this craton is flanked by a belt of folded sedimentary rocks about 600-400 m.y. old, while the ice-free area of East Greenland stretching from Scoresbysund to Nordostrundingen is built up of an array of rocks from more than 2000 m.y. to about 475 m.y. old, all of which were folded and altered during a period of mountain building that ended about 450 m.y. ago. These folded rocks are overlain by thick sequences of sedimentary rocks laid down in the interval 390 – 75 m.y. ago. South of Scoresbysund extrusive basalt lavas about 55 m.y. in age cover all the older rocks.

155. The final event in the geological history of East Greenland was the development of the Inland Ice sheet, a consequence of the major climatic deterioration that set in about 2.5 m.y. ago. At the height of the last major glaciation the extent of the ice cap was much greater than today, and parts of the continental shelf were covered by ice.

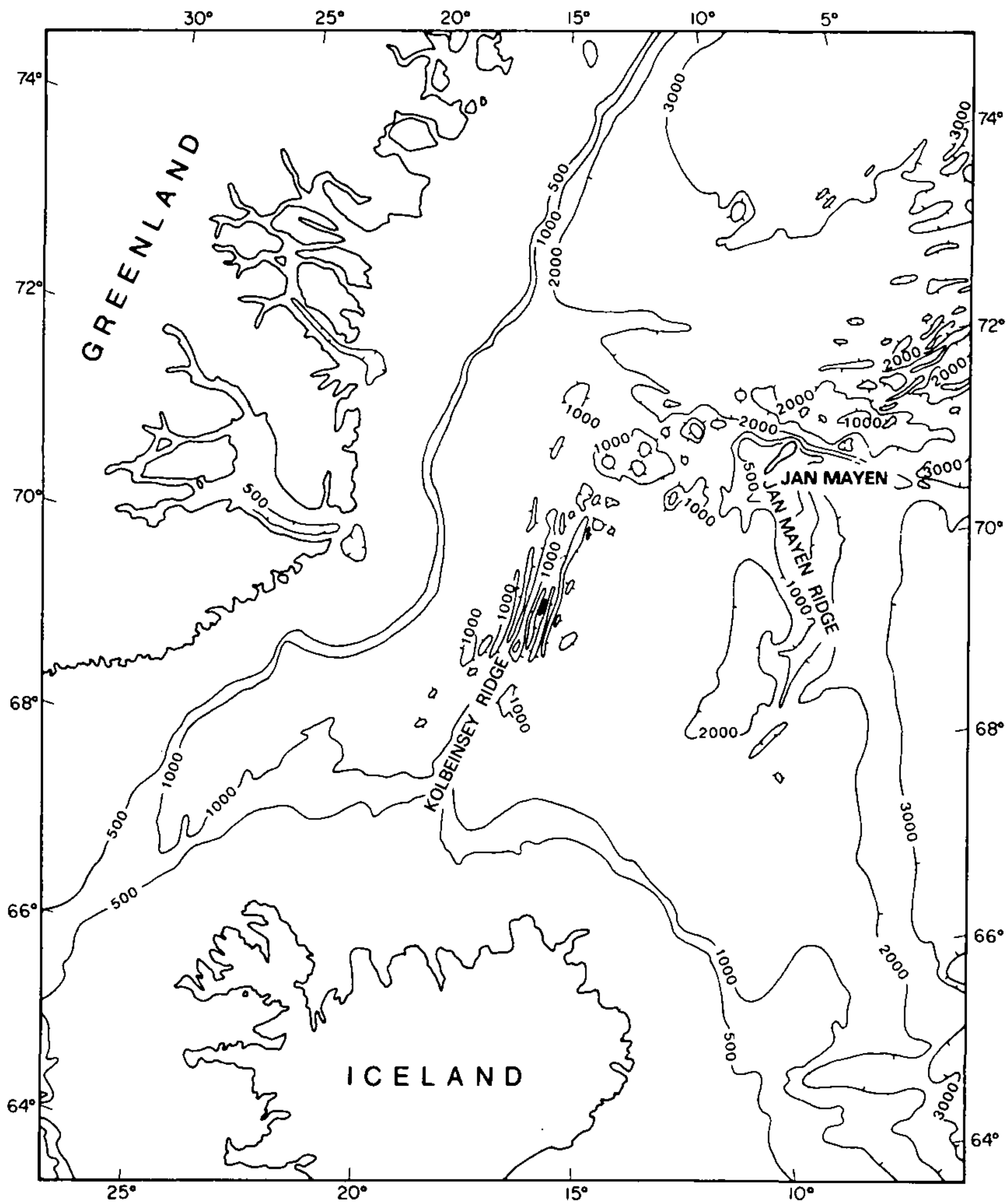
The East Greenland Shelf in the Relevant Area

156. The East Greenland shelf is a distinct offshore morphological feature throughout the relevant area, as may be seen from the figure on the opposite page.

157. The shelf break is approximately 55 nautical miles from the coast at 72N and approximately 100 nautical miles from the coast at 76N. As an estimate it can be said that the edge of the continental margin lies less than 200 nautical miles from the coast within the relevant area.

The Oceanic Area between Jan Mayen and Greenland

158. Jan Mayen is a volcanic island situated at the northern end of a submarine feature known as the Jan Mayen Ridge, cf. the figure on the opposite page. Water depths increase southwards along the Ridge from Jan Mayen and reach 1,000 metres at a point about 150 nautical miles south of the southwestern tip of the island. While one does not commonly talk of a continental shelf, with a shelf break and margin, in connection with small volcanic islands,



Simplified bathymetric map of the Greenland–Jan Mayen area. Depths in metres.

one may in the case of Jan Mayen and the Jan Mayen Ridge arbitrarily define a shelf with a shelf break at the 1,000 metre isobath. However, it should be noted that in the maritime area west of Jan Mayen and north of approximately 70° N, the sea floor topography is rough, and terms like continental rise, slope and shelf break are not applicable in this area. As for the shelf margin to the west of the Ridge and south of 70° N, this is within 50 nautical miles of the axis of the Ridge, i.e. more than 200 nautical miles from the east coast of Greenland.
It is generally accepted in the scientific community that the Jan Mayen Ridge was split off the east side of Greenland when the axis of sea floor spreading in the southern part of the Norwegian-Greenland Sea shifted from a position in the Norwegian Sea to its present position along the submarine Kolbeinsey Ridge. This split-off started about 30 m.y. ago, and the ocean between Jan Mayen and East Greenland is floored by oceanic crust formed during the last approximately 25 m.y., cf. paragraph 203.
As is evident from the foregoing, there exists no common shelf between East Greenland and Jan Mayen.

C. Climate

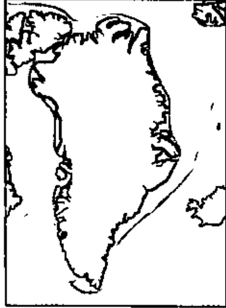
159. The whole of Greenland has an arctic climate but owing to the island's vast expanse there are great variations in humidity and temperature. The ice cap makes the climate arctic even in South Greenland where the annual mean temperature is around or below freezing point. Even in the warmest month the mean temperature does not rise above 10° C (50° F) which corresponds to the temperature of the timber line. Consequently there are no forests, but in the southernmost parts there are birch shrubs with scattered patches of Greenland rowan, and willow scrubs are seen up to 72N. With a few exceptions, growth of cultivated plants is not profitable. Grain, for example, cannot ripen. Another characteristic feature of an arctic climate is that the subsoil is frost-bound at a certain depth. The short summer leaves time for only the upper layers to thaw. This phenomenon, known as permafrost, gives rise to high costs of building and construction because instability of the upper layers of soil enhances the need for foundation.

160. One of the most important mechanisms regulating the climate and its variations is the exchange of heat between sea and atmosphere.
The permanent ocean current in Fram Strait which separates North-East Greenland from Svalbard is of vital importance for the entire energy balance in East Greenland regions. From the Arctic Ocean

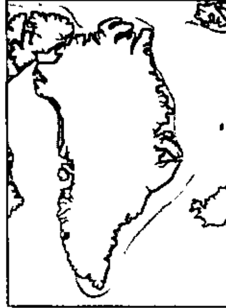
SEA ICE

Normal distribution of sea ice

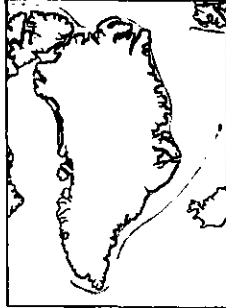
JANUARY



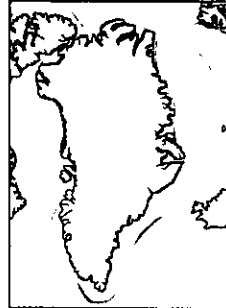
FEBRUARY



MARCH

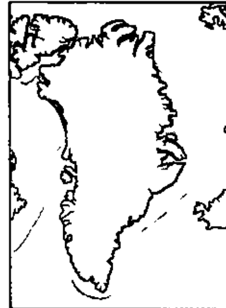


APRIL



MAY

JUNE

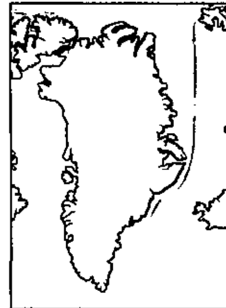


JULY

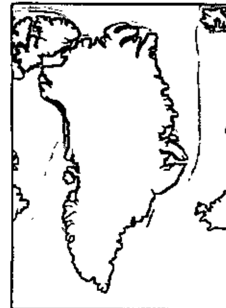
AUGUST

SEPTEMBER

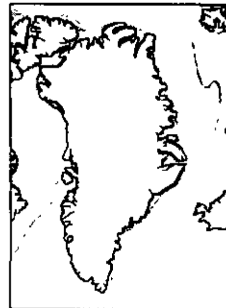
OCTOBER



NOVEMBER



DECEMBER



Great deviations from normal distribution may occur

Compact ice

Polar ice

West ice

Source: Kalaallit Nunaat Atlas Greenland

the ice-cold East Greenland Current runs south along the east coast of Greenland until it eventually meets the warm Irminger Current, which is a branch of the North Atlantic Current, and bends to the west, south of Iceland towards South-East Greenland. The two currents take the same course, the East Greenland Current as a cold surface current (the water is less salty and therefore lighter), and the Irminger Current as a warm undercurrent (the water is saltier and therefore heavier). Influenced by the rotation of the Earth the currents bend to the west round Cape Farewell and continue northwards along West Greenland while gradually mingling. Both sea and air temperatures are therefore higher in West Greenland than in East Greenland, and variations in the force of the two currents cause variations in temperature.

The southward flow of the cold East Greenland Current carries with it enormous quantities of ice, about 6 million tons per minute. The figure on the previous page shows the mean month-by-month distribution *of compact ice and polar ice around the coasts of Green*land.

The figure illustrates how the waters off the northern segment of the east coast of Greenland are permanently covered by compact ice. Scoresbysund is practically unnavigable throughout the year and the important East Greenland settlement of Ammassalik is navigable only from July through October.

Compact ice and polar ice make coastal fishing off the east coast of Greenland north of Cape Brewster practically impossible for all 12 months of an average year. The ice pack extends so far seawards that it covers the disputed area for most of the year, allowing commercial fishing within the disputed area only in late summer and early autumn (July - September).

Section 4. Economic Structure and Exploitation of Resources

A. General Remarks

161. Geography, demography and climate are factors of importance to the economy of any developing area. In Greenland, the influence of these factors upon the economy has been of particular weight.

162. When looking at the Greenland economy it must be kept in mind that one of the most striking features in the history of the people of Greenland is the struggle for survival in this arctic region where a vast land area of approximately 2,200,000 square kilometres with a surrounding sea of about 2,000,000 square kilometres can hardly sustain a population of about 55,000 people. Every possible resource must be relied upon, and every kind of resource exploita-

tion requires a considerable amount of imagination because of the ice conditions on land as well as in the sea, cf. paragraph 164. The population of the north-west and eastern parts of Greenland has developed the so-called allu-hunting i.e., hunting at breathing holes, travelling from place to place on the ice-belt off the shores looking for breathing holes to which the seals are drawn.

163. Arctic weather conditions coupled with the enormous distances and the low population density have required large *per capita* investments in infrastructure and communications. These circumstances similarly account for a relatively high cost level of public services and a corresponding heavy burden on the expense budget of the Home Rule Authority.

164. Traditional as well as modern Greenland economy has relied on exploitation of natural resources as the principal means of survival and generation of income. The arctic climate excludes farming and most kinds of animal husbandry, and thus Greenland depends heavily on fish produce and to a lesser extent on mineral resources for its export earnings.

165. Table I below demonstrates how fish and fish products have accounted for approximately 80 per cent. of the total value of Greenland exports in the period 1985–1988.
This high percentage makes Greenland as dependent on fisheries as fishery-dependent Iceland and the Faroe Islands. Ore and minerals, primarily zinc and lead, made up between 12 and 18 per cent. of the total export value in the same period.

TABLE I Composition of Exports. Values in millions of USD (current prices)[9].

Items	*1985*	*1986*	*1987*	*1988*
Fish and fish products	185	220	256	268
Ore and minerals	44	40	37	62
Other items	9	12	14	11
Total	238	272	307	341

Source: Q-Data, Nuuk, Statistiske Meddelelser, 1989:1

166. Export earnings, however, are not sufficient to finance Greenland's imports. Greenland has seen a continuous trade deficit for many years. Table II below depicts the balance of trade in selected years since 1970.

[9]) *Throughout the Memorial figures in Danish Kroner have been converted into US Dollars on the basis of the rate of exchange on 1 June 1989 when 100 US Dollars (USD) equalled Danish Kroner (DKK) 772.25.*

TABLE II Greenland's Trade Balance. Selected years between 1970 and 1988. Values in millions of USD (current prices).

	1970	*1975*	*1980*	*1985*	*1986*	*1987*	*1988*
Exports.........	13	66	135	239	272	307	341
Imports	51	96	239	407	382	466	443
Trade deficit	38	30	104	168	110	159	102

Source: The Prime Minister's Department: Greenland Yearbook 1988, Copenhagen

Although the trade deficit has increased considerably since 1970 in absolute figures – with a downward trend since 1985, however – it should be noted that the growth rate of exports has by far exceeded that of imports; in 1970 the export value amounted to a mere fourth of the import value, whereas that figure had risen to approximately three fourths in 1988.

167. Since the export earnings of Greenland are not yet capable of sustaining the economy, Greenland has, to a very large extent, to rely on unrequited transfers from Denmark to finance imports and public expenditure[10]). In 1987, Danish unrequited transfers totalled approximately USD 343 million, a figure almost identical with the 1988 value of the entire exports of Greenland, cf. Table II above.

168. Table III below provides a general view of the economy of the public sector in Greenland in the year of 1987, listing the aggregate income and expenses of the Home Rule Authority, the income and expenses of the municipal sector in Greenland, and the Greenland-related expenses of the central authorities of the Realm.

[10]) *Unrequited transfers include direct payments to Greenland branches of the Central Authorities of the Realm, block grants to the Home Rule Authority, and subsidies to the Greenland municipalities. The direct payments cover public expenditure in areas not transferred to Home Rule, whereas the block grants finance the operations of the Home Rule Authority in transferred fields, cf. paragraphs 124 – 126. The Home Rule Authority enjoys complete freedom in allocating the block grants to specific purposes. With the gradual transfer to Home Rule, the Danish State's direct payments have decreased while block grants have increased.*

TABLE III 1987 income and expenditure of the Home Rule Authority, 1987 income and expenditure of the municipal sector in Greenland, and the 1987 Greenland-related expenditure of the central authorities of the Realm. Values in millions of USD (current prices).

			1987
A.	*The Home Rule Authority*		
1.	Total income		370
	Income tax and duties	105	
	Block grants	174	
	Other income	91	
2.	Total operating and capital expenditure		435
3.	Deficit		65
B.	*The municipal sector in Greenland*		
1.	Total income		215
	Municipal taxes	114	
	Block grants and direct payments	91	
	Other income	10	
2.	Total operating and capital expenditure		202
3.	Surplus		13
C.	*The central authorities of the Realm*		
1.	Total Greenland-related expenditure (unrequited transfers)		343
	Block grants to the Home Rule Authority and the municipal sector	186	
	Operating and capital expenditure in fields not transferred to Home Rule	157	

Source: Report on the Economic Development in Greenland in 1988, submitted by the Advisory Committee on the Economy of Greenland, the Prime Minister's Department, Copenhagen.

169. In addition to Danish disbursements the Home Rule Authority has secured the necessary funding for its operations through raising Danish-currency loans in mortgage banks in Denmark. In 1988, the *Landsstyre,* obtained foreign-currency loans in commercial banks abroad in the amount of USD 150 million.

170. Finally, the overall size of the economy of Greenland may be illustrated by Table IV below depicting Greenland's Gross Domestic Product, Gross National Product, and Gross National Income.

TABLE IV Gross National Income of Greenland. Selected years 1984, 1986, 1987. Current prices in millions of USD.

	1984	*1986*	*1987*
1. Gross Domestic Product	530	618	701
2. Indirect taxes	32	43	58
3. Subsidies	53	14	14
4. Gross National Product in market prices (1+2-3)	509	647	745
5. Wages, dividends, and interests to abroad (net)	37	52	52
6. Gross National Income in market prices (4-5)	472	595	693
7. Unrequited transfers from abroad	340	340	372
8. Gross National Income, disposable (6+7)	812	935	1,065

Source: Q-Data, Nuuk, Statistiske Meddelelser 1989: 2 and 1989:3

The relatively high Gross National Income figure belies the actual scarcity of financial resources in Greenland. Greenland's economy is still very much in a stage of development with unusually large capital-intensive investment requirements. The majority of these public and commercial investments, e.g. in housing, educational and health systems, supply of goods, public fisheries industry and fishing vessels, etc., are undertaken by the public sector that plays a predominant role in the economy of Greenland.

171. The cost level for investments in construction and engineering projects is considerably elevated in Greenland due to the complete dependence on imported materials, high transportation costs, and difficult climatic and environmental conditions.

172. Similarly, the maintenance of a satisfactory level of public services requires additional expenditure in Greenland, because a fairly small population lives scattered over extremely long stretches of coast in small villages and towns accessible only by ship or helicopter.

B. THE GREENLAND FISHERIES SECTOR.

173. During the 20th century Greenland fishing activities have developed from small-scale fishing from kayaks and other primitive boats into an industry utilizing modern equipment, including large sea-going trawlers and other highly specialized vessels.

Major investments have been made not only in order to build up an efficient fishing fleet but also to construct new, and improve existing, on-shore facilities such as fish-processing plants.

174. Today the Greenland fisheries sector employs about one fourth of the labour force and accounts for approximately 80 per cent. of the total export earnings, cf. paragraph 165. Merely to say that Greenland is dependent on the natural resources of the sea is not sufficiently emphatic. The fact is that the development of the fisheries sector is decisive for the development of the entire Greenland economy.

175. The fundamental prerequisite for the development of any fisheries sector is the existence of exploitable fish stocks. Fortunately, many lucrative fishing grounds are to be found in the seas surrounding Greenland. This fact has attracted many foreign fishing vessels for decades. In order to preserve the fish stock an annual total allowable catch (TAC) is established for each of the economically interesting species on the basis of marine biological advice.

176. Effective from 1 February 1985 legislative competence in fishery matters was transferred to the Greenland Home Rule Authority. The Home Rule allowed for such transfer of competence as early as 1979, but this competence was exercised by the EEC and could not be transferred to Greenland for independent exercise until after Greenland's withdrawal from the EC.

177. Simultaneously with the Treaty on Greenland's withdrawal from the EC, a ten-year Agreement on Fisheries was concluded between Denmark/Greenland and the EEC (Annex 21). The Agreement, dated 13 March 1984, envisages the conclusion of supplementary protocols. A Protocol of the same date regulates fishing by EEC vessels in Greenland waters, including what species may be fished, what catch possibilities are allotted to the EEC, and what financial compensation Greenland should receive from the EEC for fishing rights granted to the EEC. Under the five-year Protocol, expiring on 31 December 1989, Greenland has received annual payments from the EEC in the amount of USD 27.5 million.
In recognition of Greenland's economic dependence on fisheries the above-mentioned Agreement on Fisheries and supplementary protocols guarantee Greenland minimum quotas if biological circumstances for a given fishing year require TACs to be fixed below a certain level. In such cases the EEC quotas will be fixed at a level below the quantities fixed in the Protocol, without this reduction affecting the level of Greenland's annual remuneration, cf. Article 7 of the Agreement on Fisheries.

178. The Commercial Fisheries Act of the *Landsting*, No. 11 of 21 November 1984 (Annex 22) empowers the *Landsstyre* to establish annual TACs and quotas based upon marine biological advice. The TACs and the quotas for 1988 are contained in the Greenland Home Rule Executive Order No. 27 of 1 December 1987 (Annex 23). The Order reflects that the most valuable species (cod, shrimps and Greenland halibut) in the waters off West Greenland are largely reserved for Greenland fishermen. In East Greenland waters, non-Greenland fishing vessels (including those of the European Communities) have been granted larger quotas, but primarily for species that Greenland itself has not yet been able to exploit to any major extent.

179. Greenland's share of total catches in Greenland waters has shown an upward trend in recent years with the 1987 Greenland catch accounting for 85 per cent. of the total against only 62 per cent. in 1984.
The increasing capacity of the Greenland fishing fleet is illustrated in Table V below listing the total tonnage of the Greenland fishing vessels.

TABLE V Total tonnage of registered fishing vessels in Greenland of 20 GRT or more.

	1984	*1985*	*1986*	*1987*	*1988*
Tonnage	24,457	28,787	32,817	33,465	39,970

Source: The Danish Yearbook on Fisheries, 1984 – 1988.

THE FISHING FOR CAPELIN

180. At present capelin is the only fish that is being commercially exploited in the disputed area. As the economic potential of the capelin fishing is substantial, the issue of the exploitation of the capelin stock has played an important role during the negotiations between Denmark and Norway concerning the maritime delimitation in the present case, cf. Part I, Section 2.

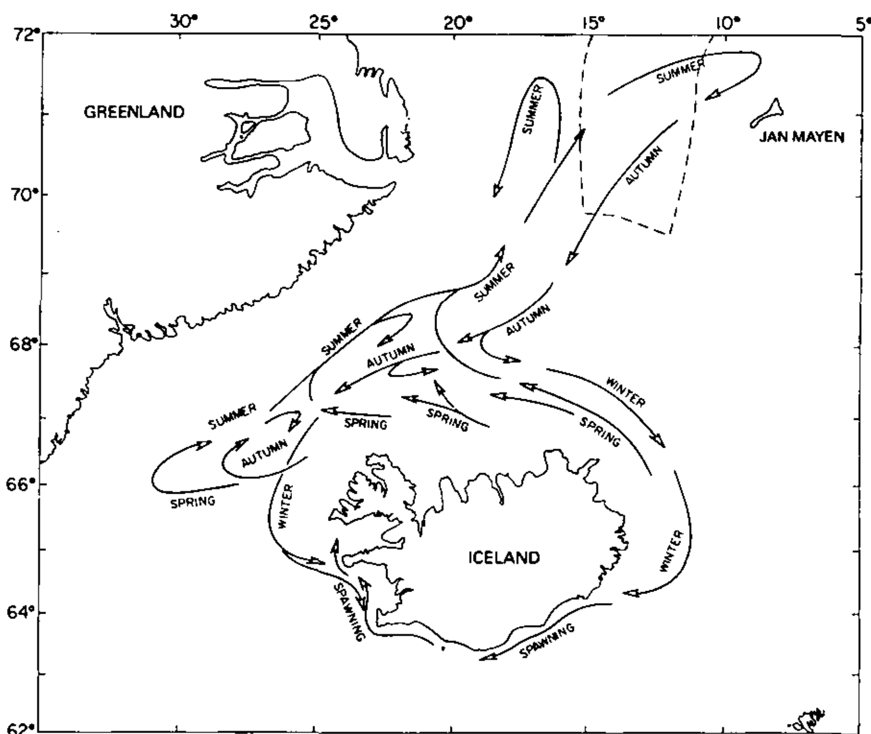
181. Capelin is a species which is used primarily for production of fishmeal and fish oil. However, the population of the small communities on the east coast of Greenland has a long tradition of using capelin for human as well as animal consumption, cf. Annex 24 on the role of capelin in the traditional Greenland society.

182. Capelin is a migratory fish with a life span of 3 – 4 years. The relevant capelin stock is found within the economic zone of Iceland and the fishery zones of Greenland and Jan Mayen, including

the disputed area. The migratory pattern of the capelin varies greatly with the climatic conditions but may in very general terms be described as follows:

The three-year-old capelin spawn off the south coast of Iceland in the months of March and April[11]). The young capelin remain primarily in Icelandic waters, the one-year-olds spending the months of May through August inside the Greenland fishery zone. In summer and autumn some of the two and three-year-old capelin expand their migratory range to include the waters between Greenland and Jan Mayen. These fish return to Icelandic waters in October where they stay until March when the majority spawn at the age of three years and die.

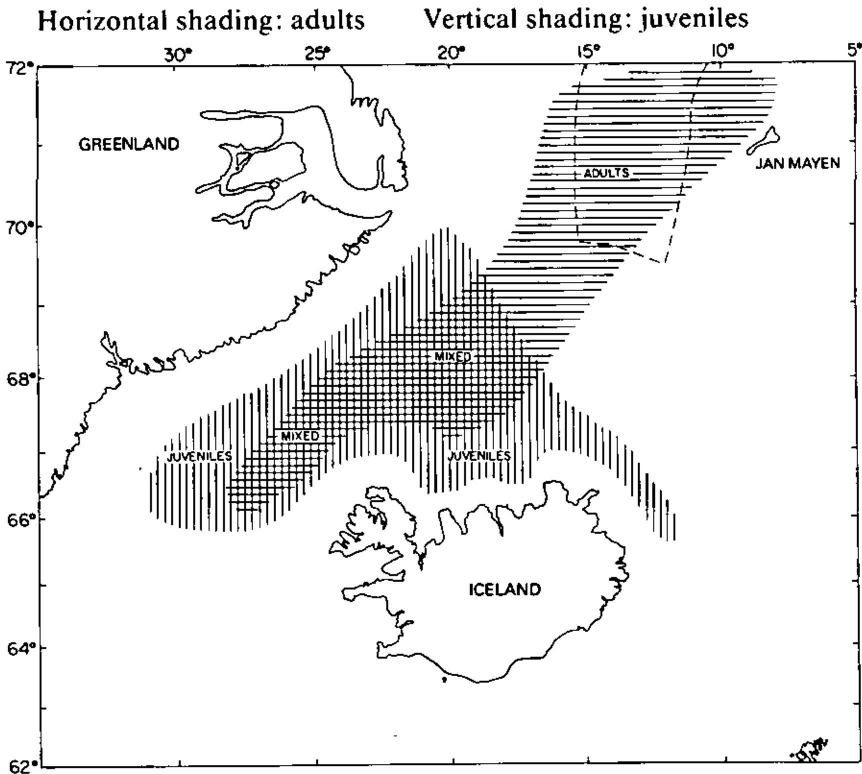
The migratory routes of two and three-year-old maturing capelin during the year is shown in the figure below.



[11]) *Capelin also spawn in the fiords of East Greenland, especially in the Ammassalik region ("Ammassalik" means capelin place in Greenlandic), but it remains uncertain to what extent there is a connection between the stocks.*

183. Capelin is considered to be commercially fishable at the age of 31 – 39 months. It is estimated that during the period from July to September over half the fishable stock is outside the Icelandic economic zone, part of this adult stock migrating to the disputed area between Greenland and Jan Mayen, cf. the figure below showing the typical geographical distribution of juvenile and adult capelin during feeding season.

Horizontal shading: adults   Vertical shading: juveniles



184. Even though ice conditions prevent coastal fishing off East Greenland practically throughout the year and in the disputed area for a good part of the year, cf. paragraph 160, there is access to the disputed area during the months of July through September, making it one of the most important fishing grounds for summer capelin.

185. From the early 1960s through the mid-1970s capelin was fished commercially only off the coasts of Iceland, and purely by Icelandic fishermen. In the late 1970s Norwegian and Danish vessels commenced fishing capelin in the waters between Greenland and Jan Mayen.

186. Total annual and seasonal catches of capelin in the Iceland – Greenland / Jan Mayen area are shown in Annex 25. In 1987 the total catch of capelin amounted to about 1 million tonnes.

187. Catches of capelin in Greenland fishing territory off East Greenland from 1981 up to and including 1987, as reported to the Danish authorities, are listed in the table below which shows the combined Greenland, Faroese and EEC catches.

TABLE VI Combined Greenland, Faroese and EEC catches of capelin in tonnes.

	1981	*82**	*83**	*84*	*85*	*86*	*87*
Total	23,473	0	0	14,177	81,242	69,690	66,342

* *Catches not allowed because of the biological status of the stock.*

The Danish authorities are not in possession of reports on Norwegian or Icelandic capelin catches within the disputed area.

GOALS SET FOR DEVELOPMENT OF GREENLAND'S FISHERY SECTOR

188. At present, exploitation of the fishing resources in Greenland waters is the only way in which Greenland in the foreseeable future can achieve a higher degree of economic independence. The Home Rule authorities aim at building up fishing and production capacities which will be adequate to meet that goal. Throughout the years the fisheries sector as a whole has suffered substantial losses and been dependent on considerable public subsidies. To reverse this trend the Home Rule authorities have focused on modernizing the production machinery, on gearing investment to availability of resources and, taught by history, on not relying solely on one species which has proved to be vulnerable to climatic changes.

189. The preliminary goals set for exploitation by Greenland alone of the resources within Greenland's fishing zone have been realized to a great extent. A further development of fisheries in Greenland waters requires continued technological development and exploitation of all potential resources in the form of either fishing from own vessels or selling fishing rights under agreements with other countries.

C. ACTIVITIES REGARDING GREENLAND'S NON-LIVING RESOURCES

190. Exploration for and exploitation of the non-living resources of Greenland have been carried out since the middle of the 19th century.

Many varieties of ore and minerals have been extracted at various locations in Greenland during the years, e.g., lead, zinc, coal and cryolite. However, the majority of the mining activities have now ceased, and today only one mine is in operation, namely the "Black Angel" lead and zinc mine in the municipality of Uummannaq. This mine has been almost exhausted, however, and the "Black Angel" is expected to close down in 1990.

191. Several attempts have been made to find new deposits of exploitable non-living resources in Greenland. Thus, exploratory activities are carried out for hard minerals as well as for hydrocarbons.

192. At present, on-shore exploration for hydrocarbons is being carried out in Jameson Land in East Greenland in an area of 10,000 square kilometres. Seismic surveys were initiated in Jameson Land in 1985.
With a view to providing a basis for decision-making concerning future oil exploration activities in parts of Greenland other than Jameson Land, it is planned during the next six years to carry out a reconnaissance survey of off-shore oil potential. This project covers collection, processing, interpretation, and sale of about 13,500 line kilometres of new seismic data collected on shelf areas off the west and east coasts of Greenland, 8,500 kilometres off North-East Greenland and 5,000 kilometres off West Greenland.
It is still too early to tell whether exploration activities in Greenland will result in the discovery of deposits of exploitable non-living resources which in the future may contribute to the development of the Greenland economy.

193. The exploration activities in Greenland are carried out partly by the public sector and partly by private enterprises on the basis of licences and concessions. The concessions were formerly granted solely by Danish authorities, but following the introduction of a new scheme for the administration of mineral resources in Greenland in 1979, granting of concessions and licences and all other substantial decisions regarding mineral resources in Greenland are contingent on agreement between the Danish Minister for Energy and the Greenland *Landsstyre*[12])

---

[12]) *For more details on the scheme for administration of mineral resources in Greenland, including the new agreement on distribution of public revenue between Greenland and Denmark, cf.: The Administration of Mineral Resources in Greenland (Annex 26) and Act No. 585 of 29 November 1979 on Mineral Resources, etc. in Greenland, as amended by Act No. 844 of 21 December 1988 (Annex 27).*

CHAPTER III

JAN MAYEN

Section 1. History and Status

194. It is generally believed that Jan Mayen was first discovered in 1607 by the Englishman Henry Hudson. The island was rediscovered in 1614 by the Dutchman Jan Jacobszoon May, after whom the island is named. Legally, Jan Mayen was *terra nullius* until it was annexed by Norway in 1929.

195. From approximately 1611 until approximately 1640 the waters round the island were much frequented by *inter alia* British, Danish and Dutch whalers. After whaling had come to an end the island was left deserted for more than 200 years.
From the end of the 19th century Jan Mayen was visited by several scientific expeditions, including Danish and Norwegian. Norwegian hunters wintered on the island during a short period around 1900, hunting blue fox and white fox.
After the year 1916 a number of cases occurred of private Norwegian citizens notifying the Norwegian Government of their occupation of certain parts of Jan Mayen, apparently with a view to starting some kind of economic exploitation of the island.

196. Norwegian meteorological activities on Jan Mayen started in 1921 when the first meteorological station on Jan Mayen was established by the Norwegian Meteorological Institute, a privately owned but government-supported organization. In this connection the Institute effected a private occupation of certain parts of Jan Mayen in 1922, followed in 1926 by a likewise private occupation of the whole island.

197. In the same year a Danish scientific expedition visited Jan Mayen with a view to investigating the possibility of establishing a Danish seismic station on the island, considering its obviously favourable geographical position as far as seismic observations are concerned. However, the expedition arrived at the conclusion that establishment of a seismic station on Jan Mayen could not be recommended due to the structure (porous) of the underground and the general level of seisms on the island.

198. By a Norwegian Royal Decree of 8 May 1929 Jan Mayen was annexed by Norway. Denmark and other countries were notified of the annexation. Denmark did not object to the annexation.

I 5•

199. According to the Norwegian Act No. 2 of 27 February 1930 Jan Mayen is constitutionally a part of the Kingdom of Norway.

Section 2. Geography

200. Jan Mayen is situated at about 71N, 830'W in isolation in the Greenland Sea, cf. Map I, approximately 550 nautical miles from the Norwegian mainland, approximately 250 nautical miles to the east of Greenland and approximately 300 nautical miles to the north-east of Iceland. The area of the island is about 380 square kilometres. It is about 54 kilometres long in NE-SW direction and has a maximum width of approximately 16 kilometres. The highest point on the island is the summit of the volcanic cone Beerenberg, 2,277 metres high, which is situated in the northeastern part of the island. The southern part of the island rises to over 700 metres above sea level, while the central part is relatively low-lying and only 2.5 kilometres wide. The upper part of Beerenberg is covered by a permanent ice cap. This feeds a number of glacier tongues, five of which reach the sea.

201. The average temperature is below 0C (32F). Winds of gale force and long periods of fog occur frequently.

202. The plant life is scanty, consisting mostly of mosses and lichens. The bird fauna is abundant, but of quadrupeds only foxes are found.

Section 3. Geology

203. Jan Mayen is an oceanic volcanic island less than a million years old. It is probably underlain by oceanic crust, but morphologically it lies at the northern end of the submarine Jan Mayen Ridge which is believed, though it has not yet been proved, to have a core of continental crust. The Jan Mayen Ridge is separated from East Greenland by an area of oceanic crust formed by spreading along the Kolbeinsey Ridge during the last 25 million years.

204. Jan Mayen is built up entirely of volcanic rocks, mainly basalts but also trachytes. Most of the volcanic rocks occur as subaerial lava flows. The island has been volcanically active throughout historical time. Comparison of the newest topographic map with reliable older maps going back to 1650 indicates that the coastline has been modified by lava flows on a number of occasions since that date. The most recent eruption occurred in 1970 on the north-east

21 September 1990

M E M O R I A L

S U B M I T T E D B Y

T H E G O V E R N M E N T O F

T H E K I N G D O M O F D E N M A R K

VOLUME I

JULY 1989

Corrigendum
submitted by the Government of Denmark

Page 24, paragraph 90, line 3: for "Jan Mayen" read "Norway"

Page 115, in the reference to the Maritime Boundary Agreement between Venezuela and the United States of America, for "24 March 1978" read "28 March 1978".

0849f

slope of Beerenberg, and more eruptions can be expected in the future.

205. As to the oceanic area between Jan Mayen and Greenland reference is made to paragraph 158.

Section 4. Utilization

206. Jan Mayen is a desolate island without natural resources of any significance. In the past, mining activities (lignite) as well as hunting activities (blue and white fox) have been attempted and abandoned. There are no harbours (natural or artificial) on the island and various projects for construction of a port to form a base for fishing and hunting have all been relinquished.

207. Today, Jan Mayen functions as a base for a meteorological station, a LORAN C (Long Range Navigation System) station and a coastal radio station. About 25 persons (mainly technicians and meteorologists) are temporarily stationed on the island to perform the functions required for operating the above-mentioned stations. These persons, who are normally stationed on the island for a term of twelve months, form the only "population" of Jan Mayen. Transportation to and from the island is possible only by air.
Thus, the island of Jan Mayen has no significance as a base for the lucrative Norwegian fishing which takes place in the waters around the island.

CHAPTER I

THE PRINCIPLES AND RULES APPLICABLE TO MARITIME DELIMITATIONS

Section 1. General Principles and Rules

INTRODUCTORY REMARKS

208. The description in Part I establishes the factual basis for considering the essential question whether an island with the special characteristics of Jan Mayen should be entitled to a maritime zone which impinges upon Greenland's right to a 200-mile continental shelf area and fishery zone.

209. In order to address this issue it might be useful first, as done in this Section, to give a brief description of the general principles and rules governing maritime delimitations. Section 2 deals with the more specific question of the legal status of islands, including Jan Mayen, in maritime delimitations. Finally, Section 3 discusses the relevant factors which in the view of the Government of Denmark should be taken into account in the present case.

A. CONVENTION ON THE CONTINENTAL SHELF OF 29 APRIL 1958

210. The Convention on the Continental Shelf of 29 April 1958 was ratified by Denmark on 31 May 1963 and acceded to by Norway on 9 September 1971. It remains in force as between the two States.

211. According to Article 6.1 the delimitation of continental shelf areas between States whose coasts are adjacent to or opposite each other shall be determined by agreement between them. This agreement should seek to embody an equitable result, as was affirmed by the International Court of Justice in the *Libya/Malta case concerning the Continental Shelf, 1985:*

> "The normative character of equitable principles applied as a part of general international law is important because these principles govern not only delimitation by adjudication or arbitration, but also, and indeed primarily, the duty of the Parties to seek first a delimitation by agreement, which is also to seek an equitable result ..." *(I.C.J. Reports 1985,* p. 39, para. 46).

212. With reference to situations where no agreement has been reached between the Parties, Article 6.1 sets out a rule of equidistance, a rule which, however, is not of an obligatory character, not even as a starting point for a delimitation. This follows from the wording of Article 6.1, "..... unless another boundary is justified by special circumstances .....,". That wording is interpreted as having in view the achievement of equitable solutions taking into consideration the relevant special circumstances of each particular case of delimitation.

213. This interpretation has formed the basis of the Court's approach in all its decisions concerning continental shelf delimitations.

214. Reference is made to the *North Sea Continental Shelf cases, 1969*, in which the Court said:

> "In the records of the International Law Commission, which had the matter under consideration from 1950 to 1956, there is no indication at all that any of its members supposed that it was incumbent on the Commission to adopt a rule of equidistance because this gave expression to, and translated into linear terms, a principle of proximity inherent in the basic concept of the continental shelf, causing every part of the shelf to appertain to the nearest coastal State and to no other, and because such a rule must therefore be mandatory as a matter of customary international law. Such an idea does not seem ever to have been propounded...". *(I.C.J. Reports 1969*, p. 33, para. 49).

215. In its decision in the case concerning the *Delimitation of the Continental Shelf between the United Kingdom and France, 1977, (United Nations Reports of International Arbitral Awards*, Volume XVIII, Part I) the Court of Arbitration said (para. 70):

> "...In short, the rôle of the "special circumstances" condition in Article 6 is to ensure an equitable delimitation; and the combined "equidistance-special circumstances rule", in effect, gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles.... Consequently, even under Article 6 the question whether the use of the equidistance principle or some other method is appropriate for achieving an equitable delimitation is very much a matter of appreciation in the light of the geographical and other circumstances. In other words, even under Article 6 it is

the geographical and other circumstances of any given case which indicate and justify the use of the equidistance method as the means of achieving an equitable solution rather than the inherent quality of the method as a legal norm of delimitation."

216. Reference can also be made to the Judgment of the International Court of Justice in the *Tunisia/Libya case concerning the Continental Shelf, 1982*:

"Before considering the methods of delimitation discussed by the Parties in argument, the Court thinks it appropriate to make some observations on the equidistance method. The Court held in the *North Sea Continental Shelf* cases, which also concerned adjacent States, that the equidistance method of delimitation of the continental shelf is not prescribed by a mandatory rule of customary law *(I.C.J. Reports 1969*, p. 46, para. 83; p. 53, para. 101). On the other hand it emphasized the merits of this rule in cases in which its application leads to an equitable solution. The subsequent practice of States, as is apparent from treaties on continental shelf boundaries, shows that the equidistance method has been employed in a number of cases. But it also shows that States may deviate from an equidistance line, and have made use of other criteria for the delimitation, whenever they found this a better way to arrive at an agreement. One solution may be a combination of an equidistance line in some parts of the area with a line of some other kind in other parts, as dictated by the relevant circumstances. Examples of this kind are provided by the 1977 arbitration on the Delimitation of the Continental Shelf between France and the United Kingdom, and by the Convention between France and Spain on the Delimitation of the Continental Shelves of the two States in the Bay of Biscay of 29 January 1974. Treaty practice, as well as the history of Article 83 of the draft convention on the Law of the Sea, leads to the conclusion that equidistance may be applied if it leads to an equitable solution; if not, other methods should be employed." *(I.C.J. Reports 1982*, pp. 78 – 79, para. 109).

"Nor does the Court consider that it is in the present case required, as a first step, to examine the effects of a delimitation by application of the equidistance method, and to reject that method in favour of some other only if it considers the results of an equidistance line to be inequitable. A finding by the Court in favour of a delimitation by an equidistance line could only be based on considerations derived from an evaluation and balancing up of all relevant circumstances, since equidis-

tance is not, in the view of the Court, either a mandatory legal principle, or a method having some privileged status in relation to other methods. It is to be noted that in the present case Tunisia, having previously argued in favour of a delimitation by the equidistance method for at least some of the area in dispute, contended in its Memorial that the result of using that method would be inequitable to Tunisia; and that Libya has made a formal submission to the effect that in the present case the equidistance method would result in an inequitable delimitation. The Court must take this firmly expressed view of the Parties into account. If however the Court were to arrive at the conclusion, after having evaluated all relevant circumstances, that an equidistance line would bring about an equitable solution of the dispute, there would be nothing to prevent it from so finding even though the Parties have discarded the equidistance method. But if that evaluation leads the Court to an equitable delimitation on a different basis, there is no need for it to give any further consideration to equidistance." *(I.C.J. Reports 1982*, p. 79, para. 110).

217. Reference is furthermore made to the Judgment of the Chamber constituted by the Court in the *Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area, 1984*, where the Chamber reached the following conclusion concerning the application of the method of equidistance:

"The Chamber therefore wishes to conclude this review of the rules of international law on the question to which the dispute between Canada and the United States relates by attempting a more complete and, in its opinion, more precise reformulation of the "fundamental norm" already mentioned. For this purpose it will, *inter alia*, draw also upon the definition of the "actual rules of law ... which govern the delimitation of adjacent continental shelves – that is to say, rules binding upon States for all delimitations" which was given by the Court in its 1969 Judgment in the *North Sea Continental Shelf* cases *(I.C.J. Reports 1969*, pp. 46-47, para. 85). What general international law prescribes in every maritime delimitation between neighbouring States could therefore be defined as follows:

(1) No maritime delimitation between States with opposite or adjacent coasts may be effected unilaterally by one of those States. Such delimitation must be sought and effected by means of an agreement, following negotiations conducted in good faith and with the genuine intention of achieving a positive result. Where, however, such agreement cannot be

achieved, delimitation should be effected by recourse to a third party possessing the necessary competence.
(2) In either case, delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result." *(I.C.J. Reports 1984,* pp. 299 - 300, para. 112).

Finally, in the *Libya/Malta case, 1985,* the Court said:

"...the Court could hardly ignore the fact that the equidistance method has never been regarded, even in a delimitation between opposite coasts, as one applied without modification whatever the circumstances. Already in the 1958 Convention on the Continental Shelf, which imposes upon the States parties to it an obligation of treaty-law, failing agreement, to have recourse to equidistance for the delimitation of the continental shelf areas, Article 6 contains the proviso that that method is to be used "unless another boundary line is justified by special circumstances."." *(I.C.J. Reports 1985,* p. 48, para. 65).

218. This analysis of the equidistance/special circumstances rule in Article 6 of the 1958 Convention on the Continental Shelf leads to the result that the rule must be seen as an expression of equity. One cannot, however, claim that Article 6 expresses a rule of customary international law governing all maritime delimitations today, such as for instance delimitation of fishery zones.

This point of view has found its clear expression in the *Gulf of Maine case, 1984,* where the Chamber constituted by the Court stated:

"The Chamber must therefore conclude in this respect that the provisions of Article 6 of the 1958 Convention on the Continental Shelf, although in force between the Parties, do not entail either for them or for the Chamber any legal obligation to apply them to the single maritime delimitation which is the subject of the present case." *(I.C.J. Reports 1984,* p. 303, para. 125).

219. In the present case concerning a single line of delimitation both for a fishery zone and a continental shelf area, it is the contention of the Government of Denmark that the applicable principles and rules are those having found expression in the 1982 United Nations Convention on the Law of the Sea. This point of view is further supported by the fact that both Parties to the present dispute have based their attitudes on the general development of interna-

tional law as expressed in that Convention, cf. paragraphs 223 and 315.

B. Convention on the Law of the Sea of 10 December 1982

220. The United Nations Convention on the Law of the Sea, 1982, has been signed, but not ratified, by Denmark and Norway. The Convention has not yet entered into force.

221. A number of the rules adopted in the Convention on the Law of the Sea, 1982, must be regarded as innovations within the sphere of international law. Other rules of the Convention must be considered as a codification based on customary international law being developed before or during UNCLOS III; this applies *inter alia* to the provisions relating to the extent of the territorial sea (Article 3), the contiguous zone (Article 33), the exclusive economic zone (Article 57) and the continental shelf (Article 76.1 and Article 77).

222. The Conference drafts had a generating effect, in the sense that the provisions which had achieved a consensus at the Conference became the nucleus for a subsequent and parallel practice of States, which in turn crystallized in the form of recognized legal rules. This occurred, for instance, with the institution of the exclusive economic zone and the fishery zone.

223. An example is provided by the Act on Norway's Economic Zone No. 91 of 17 December 1976 (Annex 2) which entered into force on 1 January 1977 and forms the legal basis of the Norwegian Royal Decree of 23 May 1980 concerning the establishment of a fishery zone of 200 nautical miles around Jan Mayen (Annex 7). The Act is based *inter alia* on the assumption that the rules contained at that time in the draft texts of the Convention on the Law of the Sea concerning an exclusive economic zone did as early as 1976 express the general practice of States. This assumption also formed the basis of the Danish Act No. 597 of 17 December 1976 on the Fishing Territory of the Kingdom of Denmark (Annex 1).

224. As of 1 June 1989 at least 74 countries have established exclusive economic zones and at least 18 countries have established exclusive fishery zones of 200 nautical miles[1]).

225. This development in contemporary international law is

[1]) *According to information received from the United Nations (Office for Ocean Affairs and the Law of the Sea).*

reflected in the Court's Judgment in the *Tunisia/Libya case* which states that the exclusive economic zone "may be regarded as part of modern international law" *(I.C.J. Reports 1982,* p. 74, para. 100).
In the *Libya/Malta case* the Court expressed itself in the following way:

> "... It is in the Court's view incontestable that ... the institution of the exclusive economic zone, with its rule on entitlement by reason of distance, is shown by the practice of States to have become a part of customary law ..." *(I.C.J. Reports 1985,* p. 33, para. 34).

This conclusion corresponds well with the *obiter dictum* in the Court's first leading judgment on maritime delimitation, the *North Sea Continental Shelf cases, 1969,* where it is said that a rule of customary international law may be created "without the passage of any considerable period of time" *(I.C.J. Reports 1969,* p. 42, para. 73). The law-making process within this field of international law has indeed progressed at a considerable speed since the *1969 Judgment* and especially since the *Fisheries Jurisdiction case (I.C.J. Reports 1974).*

226. As far as the question of *delimitation* of maritime areas is concerned, reference is made to Articles 74 and 83 of the Convention on the Law of the Sea. Both Article 74 relating to the delimitation of the exclusive economic zone and Article 83 relating to the delimitation of the continental shelf provide that, failing agreement, the delimitation shall be effected "on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice in order to achieve an equitable solution." The formulation of the two Articles is identical:

Article 74

> "1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
> 2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
> 3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period,

I 6

not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement."

Article 83

"1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement."

Articles 74 and 83 of the Convention on the Law of the Sea are the result of a compromise between the viewpoints of groups of States whose attitude to the question of delimitation during UNCLOS III differed in principle. One group, including Denmark and Norway, advocated the maintenance of an equidistance/special circumstances rule similar to that of Article 6.1. of the Convention of 29 April 1958 on the Continental Shelf, or in any case a delimitation rule which expressly mentioned the equidistance principle, while another group wanted the provisions on delimitation to be worded without any reference to an equidistance/special circumstances rule and with "equitable principles" as sole criterion of delimitation.

227. The first drafts of the provisions which were later adopted as Article 74 and Article 83, were formulated as Article 61 (the exclusive economic zone) and Article 70 (the continental shelf) of the so-called Informal Single Negotiating Text (ISNT) during the

Third Session of the Conference in 1975. The drafts reflected clearly the attempts to bridge the two different schools of thought. The texts were as follows:

Article 61

> "The delimitation of the exclusive economic zone (Article 70: the continental shelf) between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance line, and taking account of all the relevant circumstances." *(UNCLOS III, Official Records,* Vol. IV, pp. 162 – 163).

228. The same texts were included in the Revised Single Negotiating Text (RSNT) in 1976 and later in the Informal Composite Negotiating Text (ICNT) in 1977.

229. Continued efforts to reach a consensus regarding the provisions on delimitation led to a new text in 1980, included in ICNT/Revision 2 and later again in ICNT/Revision 3. This text was as follows:

> "The delimitation of the exclusive economic zone (the continental shelf) between States with opposite or adjacent coasts shall be effected by agreement in conformity with international law. Such an agreement shall be in accordance with equitable principles, employing the median or equidistance line, where appropriate, and taking account of all circumstances prevailing in the areas concerned." *(UNCLOS III, Official Records,* Vol. XIII, pp. 77 – 78).

230. Neither that text nor any other referring to equidistance was able to achieve consensus at the Conference. As is well known, a solution was not reached until a very late date when a draft was proposed the text of which was adopted as Articles 74 and 83 of the present Convention on the Law of the Sea, 1982. In that text the references to "equitable principles" as well as to "the median or equidistance line" and "all circumstances prevailing in the area concerned" were deleted and replaced by "... in order to achieve an equitable solution".

231. Both Denmark and Norway accepted the final text of the Convention as a whole including the rules on delimitation in Article 74 and Article 83. Denmark's position was based upon the assumption that the said texts of Article 74 and Article 83 would form a sa-

tisfactory legal basis which would make it possible to reach equitable solutions in maritime delimitations in all geographical parts of the world.

232. Articles 74 and 83 may be regarded as an expression of contemporary international law and thus forming the main legal basis for deciding the present dispute, cf. the decision of the Chamber in the *Gulf of Maine case, 1984,* where the Chamber commented on the rules on delimitation in the Convention on the Law of the Sea in the following way:

> "... In the Chamber's opinion, these provisions, even if in some respects they bear the mark of the compromise surrounding their adoption, may nevertheless be regarded as consonant at present with general international law on the question." *(I.C.J. Reports 1984,* p. 294, para. 94).

233. This analysis of the legal status of Articles 74 and 83 carries particular weight in the present dispute where both Parties have availed themselves of their right to establish 200-mile fishery zones or economic zones, stating as the legal basis of that right the general development in international law as that development manifested itself during UNCLOS III, and later in the Convention on the Law of the Sea itself. In so doing Denmark and Norway have also undertaken the obligation to respect in their relationship the provisions on delimitation in Article 74 of the Convention, which take specific account of the development of the concept of the exclusive economic zone.

234. In the case of Norway the establishment of an economic zone took place with reference *inter alia* to the current development at UNCLOS III, cf. the tabling in the Norwegian Parliament of the Bill on the Economic Zone of Norway on 3 September 1976[2]).

C. Case Law

235. A survey of international judicial practice concerning maritime delimitations since the adoption and entry into force of the

---

[2]) In the submission to the Norwegian Parliament of the Bill on the Economic Zone of Norway on 3 September 1976 it was inter alia stated:

> *"Based on this State practice and in the light of the support which the principle of 200-mile economic zones has gained from a vast majority of the world's nations during the Law of the Sea Conference, one may – in the view of the Government – determine that the necessary political basis and foundation of international law exist for the establishment of such zones."*
> *(Excerpt of Ot.prp. No. 4 (1976–77) p. 4)*

1958 Convention on the Continental Shelf reveals the following essential elements to be taken into account in deciding maritime delimitation disputes:

Any delimitation must be in accordance with equitable principles; equitable principles are subordinate to the result to be achieved, and it is the equitableness of the result or solution which must predominate; the equity of the result is to be determined in the light of all the relevant factors of the particular case. The relevant factors include *inter alia* the geographical configuration of the relevant coasts and their relationship to the maritime area abutting on those coasts. In this respect the geography of the coasts is a question of fact, so that there can be no question of refashioning geography to justify a result perceived to be equitable; real differences in coastal length are important, for equity does not require equal treatment for coasts that are not equal; the geography of the coasts may also indicate the appropriate method of delimitation. Further factors are: the geological and geomorphological characteristics of the sea-bed area; the conduct of the Parties; delimitations, actual or prospective, with third States in the region; the proportionality factor. The method of delimitation appropriate in a given case is that dictated by all the relevant circumstances, especially those of geography, and equidistance has no special status or priority as a method.

236. In the opinion of the Government of Denmark judicial practice has not excluded the possibility of accepting other relevant factors such as population or socio-economic factors.

237. The essential elements derived from international judicial practice will be described in the following paragraphs.

Any delimitation must be in accordance with equitable principles

238. With reference to the history of Article 6 of the Geneva Convention of 1958 the Court said in the *North Sea Continental Shelf cases, 1969:*

> "... it is clear that at no time was the notion of equidistance as an inherent necessity of continental shelf doctrine entertained. Quite a different outlook was indeed manifested from the start in current legal thinking. It was, and it really remained to the end, governed by two beliefs; – namely, first, that no one single method of delimitation was likely to prove satisfactory in all circumstances, and that delimitation should, therefore, be carried out by agreement (or by reference to arbitration); and se-

condly, that it should be effected on equitable principles. It was in pursuance of the first of these beliefs that in the draft that emerged as Article 6 of the Geneva Convention, the Commission gave priority to delimitation by agreement, – and in pursuance of the second that it introduced the exception in favour of "special circumstances..."." *(I.C.J. Reports 1969*, pp. 35 – 36, para. 55).

Furthermore it was said:

"... Nevertheless, when mention is made of a court dispensing justice or declaring the law, what is meant is that the decision finds its objective justification in considerations lying not outside but within the rules, and in this field it is precisely a rule of law that calls for the application of equitable principles." *(I.C.J. Reports 1969*, p. 48, para. 88).

In the operative part of the Judgment the Court stated that

"delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, ...". *(I.C.J. Reports 1969*, p. 53, para. 101 (C)(1)).

239. Reference is also made to the decision of the Court of Arbitration in the case concerning the *Delimitation of the Continental Shelf between the United Kingdom and France, 1977*, where the Court of Arbitration said *inter alia*:

"70 ... In other words, even under Article 6 it is the geographical and other circumstances of any given case which indicate and justify the use of the equidistance method as the means of achieving an equitable solution rather than the inherent quality of the method as a legal norm of delimitation."
"97. In short, this Court considers that the appropriateness of the equidistance method or any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case. The choice of the method or methods of delimitation in any given case, whether under the 1958 Convention or customary law, has therefore to be determined in the light of those circumstances and of the fundamental norm that the delimitation must be in accordance with equitable principles..."
"195. ...Under customary law, the method adopted for delimiting the boundary must, while applying the principle of natu-

ral prolongation of territory, also ensure that the resulting delimitation of the boundary accords with equitable principles. In other words, the question is whether the Channel Islands should be given the full benefit of the application of the principle of natural prolongation in the areas to their north and northwest or whether their situation close to the mainland of France requires, on equitable grounds, some modification of the application of the principle in those areas...".

240. In its decision in the *Tunisia/Libya case, 1982,* the Court considered "that it is bound to decide the case on the basis of equitable principles..." *(I.C.J. Reports 1982,* p. 59, para. 70). In the operative part of the Court's decision of that case it was stated consequently that

> "... A. The principles and rules of international law applicable for the delimitation, ... are as follows:
> (1) the delimitation is to be effected in accordance with equitable principles, and taking account of all relevant circumstances;..." *(I.C.J. Reports 1982,* p. 92, para. 133).

241. The Chamber constituted by the International Court of Justice in the *Gulf of Maine case, 1984,* pronounced itself in the following way:

> "The Chamber therefore wishes to conclude this review of the rules of international law on the question to which the dispute between Canada and the United States relates by attempting a more complete and, in its opinion, more precise reformulation of the "fundamental norm" already mentioned. For this purpose it will, *inter alia,* draw also upon the definition of the "actual rules of law ... which govern the delimitation of adjacent continental shelves – that is to say, rules binding upon States for all delimitations" which was given by the Court in its 1969 Judgment in the *North Sea Continental Shelf* cases *(I.C.J. Reports 1969,* pp. 46 – 47, para. 85). What general international law prescribes in every maritime delimitation between neighbouring States could therefore be defined as follows:
> (1) No maritime delimitation between States with opposite or adjacent coasts may be effected unilaterally by one of those States. Such delimitation must be sought and effected by means of an agreement, following negotiations conducted in good faith and with the genuine intention of achieving a positive result. Where, however, such agreement cannot be achieved, delimitation should be effected by recourse to a third party possessing the necessary competence.

(2) In either case, delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result." *(I.C.J. Reports 1984*, pp. 299 – 300, para. 112).

242. In the *Libya/Malta case, 1985*, the Court stated:

"Judicial decisions are at one – and the Parties themselves agree (paragraph 29 above) – in holding that delimitation of a continental shelf boundary must be effected by the application of equitable principles in all the relevant circumstances in order to achieve an equitable result...". *(I.C.J. Reports 1985*, p. 38. para. 45).

and concluded with this statement *inter alia*:

"... (1) the delimitation is to be effected in accordance with equitable principles and taking account of all relevant circumstances, so as to arrive at an equitable result;..." *(I.C.J. Reports 1985*, p. 57, para. 79A (1)).

Equitable principles are subordinate to the result to be achieved, and it is the equitableness of the result or solution which must predominate

243. This was stressed by the International Court of Justice in the *Tunisia/Libya case, 1982 (I.C.J. Reports 1982*, p. 59, para. 70) as well as in the Court's decision in the *Libya/Malta case, 1985 (I.C.J. Reports 1985*, p. 38, para. 45), when it was stated that

"It is however the goal – the equitable result – and not the means used to achieve it, that must be the primary element in this duality of characterization."

The equity of the result is to be determined in the light of all the relevant factors of the particular case

244. In the case concerning the *Delimitation of the Continental Shelf between the United Kingdom and France, 1977*, the Court of Arbitration said, in paragraph 70:

"... In short, the rôle of the "special circumstances" condition in Article 6 is to ensure an equitable delimitation; and the combined "equidistance-special circumstances rule", in effect, gives particular expression to a general norm that, failing

agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles.... Consequently, even under Article 6 the question whether the use of the equidistance principle or some other method is appropriate for achieving an equitable delimitation is very much a matter of appreciation in the light of the geographical and other circumstances...".

245. In the *Tunisia/Libya case, 1982,* the International Court of Justice stated:

"... It is clear that what is reasonable and equitable in any given case must depend on its particular circumstances. There can be no doubt that it is virtually impossible to achieve an equitable solution in any delimitation without taking into account the particular relevant circumstances of the area..." *(I.C.J. Reports 1982,* p. 60, para. 72).

246. The Chamber constituted by the Court in the *Gulf of Maine case, 1984,* stated *inter alia*:

"... Although the practice is still rather sparse, owing to the relative newness of the question, it too is there to demonstrate that each specific case is, in the final analysis, different from all the others, that it is monotypic and that, more often than not, the most appropriate criteria, and the method or combination of methods most likely to yield a result consonant with what the law indicates, can only be determined in relation to each particular case and its specific characteristics." *(I.C.J. Reports 1984,* p. 290, para. 81).

247. Most recently these views were confirmed by the Court in its conclusion in the *Libya/Malta case, 1985, (I.C.J. Reports 1985,* p. 57, para. 79 A(1)), cf. paragraph 242.

The relevant factors include:

The geographical configuration of the relevant coasts and their relationship to the maritime area abutting on those coasts

248. "The general configuration of the coasts of the Parties, as well as the presence of any special or unusual features ..." was the primary factor which the International Court of Justice told the Parties in the *North Sea Continental Shelf cases, 1969,* to take into ac-

count in the course of the negotiations resulting from the Court's Judgment *(I.C.J. Reports 1969*, p. 54, para. 101 D (1)).

249. The Court of Arbitration in the case concerning the *Delimitation of the Continental Shelf between the United Kingdom and France, 1977*, stated that "... the validity of the equidistance method, or of any other method, as a means of achieving an equitable delimitation of the continental shelf, is always relative to the particular geographical situation." (para. 84). This viewpoint was further stressed in paragraph 97 of the Court's decision quoted above, cf. paragraph 239.

250. The International Court of Justice in its Judgment in the *Tunisia/Libya case, 1982*, stated *inter alia*:

> "... The geographical correlation between coast and submerged areas off the coast is the basis of the coastal State's legal title. ..." *(I.C.J. Reports 1982*, p. 61, para. 73).

The geography of the coasts is a question of fact, so that there can be no question of refashioning geography to justify a result perceived to be equitable

251. This was first stated in the *North Sea Continental Shelf cases, 1969*, as follows:

> "Equity does not necessarily imply equality. There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline. Equality is to be reckoned within the same plane, and it is not such natural inequalities as these that equity could remedy..." *(I.C.J. Reports 1969*, p. 49, para. 91).

252. In the case between the *United Kingdom and France, 1977*, the Court of Arbitration expressed itself in the following way:

> "... Just as it is not the function of equity in the delimitation of the continental shelf completely to refashion geography, so it is also not the function of equity to create a situation of complete equity where nature and geography have established an inequity. Equity does not, therefore, call for coasts, the relation of which to the continental shelf is not equal, to be treated

as having completely equal effects. What equity calls for is an appropriate abatement of the disproportionate effects of a considerable projection on to the Atlantic continental shelf of a somewhat attenuated portion of the coast of the United Kingdom" (para. 249).

253. In its decision of the *Gulf of Maine case, 1984*, the Chamber constituted by the Court pronounced itself in a similar way *(I.C.J. Reports 1984*, p. 271, para. 37), and so did the Court itself in the *Libya/Malta case, 1985*:

> "... That equitable principles are expressed in terms of general application, is immediately apparent from a glance at some well-known examples: the principles that there is to be no question of refashioning geography, or compensating for the inequalities of nature, ..." *(I.C.J. Reports 1985*, p. 39, para. 46).

Real differences in coastal length are important, for equity does not require equal treatment for coasts that are not equal

254. Reference is made *inter alia* to the following statements in the *Libya/Malta case, 1985*:

> "... That does not however mean that the "significant difference in lengths of the respective coastlines" is not an element which may be taken into account at a certain stage of the delimitation process;..." *(I.C.J. Reports 1985*, pp. 45 – 46, para. 58)
>
> "... If the coasts of Malta and the coast of Libya from Ras Ajdir to Ras Zarruq are compared, it is evident that there is a considerable disparity between their lengths, to a degree which, in the view of the Court, constitutes a relevant circumstance which should be reflected in the drawing of the delimitation line..." *(I.C.J. Reports 1985*, p. 50, para. 68).

The geography of the coasts may also indicate the appropriate method of delimitation

255. That was stated by the Court of Arbitration in the case between the *United Kingdom and France, 1977*, in paragraph 84:

> "... In short, whether under customary law or Article 6, it is never a question either of complete or of no freedom of choice as to method; for the appropriateness – the equitable character – of the method is always a function of the particular geographical situation."

The geological or geomorphological characteristics of the sea-bed area

256. It is true that in the past the Court has recognized the relevance of geophysical characteristics of the area of delimitation if they assist in identifying a line of separation between the continental shelves of the Parties, as it was recalled in the reasoning of the Court in the *Libya/Malta case, 1985, (I.C.J. Reports 1985,* p. 35, para. 40). But where a delimitation dispute relates to an area, the extent of which is less than 200 nautical miles from the coast of either Party, geological considerations would seem to be irrelevant as stated by the Court in the same case:

> "The Court however considers that since the development of the law enables a State to claim that the continental shelf appertaining to it extends up to as far as 200 miles from its coast, whatever the geological characteristics of the corresponding sea-bed and subsoil, there is no reason to ascribe any role to geological or geophysical factors within that distance either in verifying the legal title of the States concerned or in proceeding to a delimitation as between their claims. This is especially clear where verification of the validity of title is concerned since, at least in so far as those areas are situated at a distance of under 200 miles from the coasts in question, title depends solely on the distance from the coasts of the claimant States of any areas of sea-bed claimed by way of continental shelf, and the geological or geomorphological characteristics of those areas are completely immaterial..." *(I.C.J. Reports 1985,* p. 35, para. 39).

The conduct of the Parties

257. The conduct of the Parties is an element which has often been examined thoroughly by the Court and by Arbitral Tribunals when – in the absence of e.g., treaty obligations – arguments concerning the concepts of acquiescence and estoppel have had to be commented upon. Suffice it here to mention the *Gulf of Maine case, 1984 (I.C.J. Reports 1984,* pp. 61 – 70, para. 126 – 154).

258. Such an examination of conduct may in some cases provide evidence of the fact that a binding legal obligation has evolved from the conduct of the Parties. Even in cases where no legal obligation exists, Courts will examine the degree of consistency shown in a Party's conduct towards different neighbouring States, for, unless justified by external factors which are manifestly different, a dif-

ference in treatment of its neighbours by a Party suggests a lack of consistency in that Party's interpretation of the law.

Delimitations, actual or prospective, with third States in the region

259. This element was emphasized by the Court in the operative part of the decision of the *North Sea Continental Shelf cases, 1969 (I.C.J. Reports 1969,* p. 54, para. 101 (D(3))) and in the *Tunisia/ Libya case (I.C.J. Reports 1982,* p. 93, para. 133 B(5)). In the maritime delimitation between *Guinea and Guinea-Bissau, 1985,* the Arbitral Tribunal also emphasized this element by stating in its award:

> "93. ... A delimitation designed to obtain an equitable result cannot ignore the other delimitations already made or still to be made in the region ...". (Translation from *International Legal Materials,* Volume XXV, No. 2, March 1986)[3]).

The proportionality factor

260. In its decision in the *Libya/Malta case, 1985,* the Court pronounced itself in the following way referring in paragraph 55 to its Judgment in the *North Sea Continental Shelf cases, 1969,* and stressing in paragraph 56:

> "It is clear that what the Court intended was a means of identifying and then correcting the kind of distortion – disproportion – that could arise from the use of a method inapt to take adequate account of some kinds of coastal configuration ... In fact the proportionality "factor" arises from the equitable principle that nature must be respected;..." *(I.C.J. Reports 1985,* p. 44, para. 56).

The Court went on to say *inter alia*:

> "... Consideration of the comparability or otherwise of the coastal lengths is a part of the process of determining an equitable boundary on the basis of an initial median line; the test of a reasonable degree of proportionality, on the other hand, is one which can be applied to check the equitableness of any line, whatever the method used to arrive at that line." *(I.C.J. Reports 1985,* p. 49, para. 66).

[3]) *Original text: "... Une délimitation visant à obtenir un résultat équitable ne peut ignorer les autres délimitations déjà effectuées ou à effectuer dans la région..."*

In the *Libya/Malta case* the Court referred to the close link which exists between the delimitation of maritime areas and the legal basis of title to these areas. The Court said:

> "... the legal basis of that which is to be delimited, and of entitlement to it, cannot be other than pertinent to that delimitation." *(I.C.J. Reports 1985,* p. 30, para. 27).

261. As also stated by the Court in the *Tunisia/Libya case,* it is the coast which "is the decisive factor for title to submarine areas adjacent to it." *(I.C.J. Reports 1982,* p. 61, para. 73).

262. The Court thus recognized that a State generates continental shelf rights by way of its coastal front, as is shown by the fact that those rights cannot be engendered in the case of land-locked States. Now, the coastal front generates a certain maritime area, because of its length, among other factors. It follows that proportionality is an essential factor in a delimitation operation.

The method of delimitation appropriate in a given case is that dictated by all the relevant circumstances, especially those of geography; equidistance has no special status or priority of application as a method

263. Reference is here made to the *North Sea Continental Shelf cases, 1969,* where the Court in its conclusion stated:

> "(A) the use of the equidistance method of delimitation not being obligatory as between Parties; and
> (B) there being no other single method of delimitation the use of which is in all circumstances obligatory;
> (C) the principles and rules of international law applicable to the delimitation as between Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary determined by the agreements of 1 December 1964 and 9 June 1965, respectively, are as follows:
>
> > (1) delimitation is to be effected by agreement in accordance with equitable principles and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroach-

ment on the natural prolongation of the land territory of the other;
(2) if, in the application of the preceding sub-paragraph, the delimitation leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally, unless they decide on a régime of joint jurisdiction, use, or exploitation for the zones of overlap or any part of them;

(D) in the course of the negotiations, the factors to be taken into account are to include:

(1) the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features;
(2) so far as known or readily ascertainable, the physical and geological structure, and natural resources, of the continental shelf areas involved;
(3) the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal State and the length of its coast measured in the general direction of the coastline, account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitation between adjacent States in the same region." *(I.C.J. Reports 1969, pp. 53 – 54, para. 101).*

264. The ideas embodied in the Court's decision of the *North Sea Continental Shelf cases, 1969,* were further developed by judicial practice during the subsequent years.

265. In its Judgment in the *Tunisia/Libya case, 1982,* the Court referred to its Judgment of 1969, while stressing that:

"... Treaty practice, as well as the history of Article 83 of the draft convention of the Law of the Sea, leads to the conclusion that equidistance may be applied if it leads to an equitable solution; if not, other methods should be employed." *(I.C.J. Reports 1982,* p. 79, para. 109).

266. In the *Gulf of Maine case,* the Chamber of the Court stated that equidistance is not a rule of law but "is in reality: a practical method that can be applied for the purposes of delimitation." *(I.C.J. Reports 1984,* p. 297, para. 106).

267. In the *Libya/Malta case, 1985,* the Court expressed itself in the following terms:

> "The Court is unable to accept that, even as a preliminary and provisional step towards the drawing of a delimitation line, the equidistance method is one which *must* be used, ..." *(I.C.J. Reports 1985,* p. 37, para. 43).

268. The Arbitral Tribunal entrusted with delimiting the maritime boundary between *Guinea and Guinea-Bissau, 1985,* pronounced itself as follows:

> "102. ... The Tribunal itself considers that the equidistance method is just one among many and that there is no obligation to use it or give it priority, even though it is recognized as having a certain intrinsic value because of its scientific character and the relative ease with which it can be applied. The method of delimitation to be used can have no other purpose than to divide maritime areas into territories appertaining to different States, while doing everything possible to apply objective factors offering the possibility of arriving at an equitable result. Such an approach excludes any recourse to a method chosen beforehand. On the contrary, it requires objective legal reasoning and the method to be used can come only as a result of this." (Translation from *International Legal Materials,* Volume XXV, No. 2, March 1986)[4]).

D. State Practice

269. In the analysis of State practice as evidenced by treaties, one is faced with the difficulty that the specific reasons for the actual delimitations in the agreements are generally not known. Only the result is clear; be it the drawing of a median line, a line following the 200-mile limit or an arbitrary line based typically on political or economic factors; be it different lines covering the continental shelf areas and the fishery zones respectively or, as recent State practice shows, a single line covering both maritime zones.

---

[4]) *Original text: "... Le Tribunal estime pour sa part que l'équidistance n'est qu'une méthode comme les autres et qu'elle n'est ni obligatoire ni prioritaire, même s'il doit lui être reconnu une certaine qualité intrinsèque en raison de son caractère scientifique et de la facilité relative avec laquelle elle peut être appliquée. La méthode de délimitation à utiliser ne saurait avoir d'autre objet que de diviser des espaces maritimes en territoires relevant d'Etats différents, en s'attachant à appliquer des facteurs objectifs pouvant permettre d'aboutir à un résultat équitable. Une telle démarche exclut tout recours à une méthode choisie à priori. Elle exige au contraire un raisonnement juridique objectif et la méthode à utiliser ne peut qu'en être le résultat...." (para. 102).*

270. The present dispute concerns a delimitation vis-à-vis an island. State practice concerning such delimitations will be accounted for in the following Section dealing with the status of islands in maritime delimitations.

Section 2. Status of Islands in Maritime Delimitations

General remarks

271. In Article 10 of the Convention on the Territorial Sea and the Contiguous Zone, 1958, as well as in Article 121 of the United Nations Convention on the Law of the Sea, 1982, an island is defined as a naturally formed area of land, surrounded by water, which is above water at high tide.

272. With the exception of rocks which cannot sustain human habitation or economic life of their own, international law makes no distinction between continental and insular territories with respect to their entitlement to continental shelf and economic zone rights off their coasts, cf. the Convention on the Law of the Sea, Article 121, paragraphs 2 and 3. As far as the continental shelf is concerned the equating of islands to land territory was already established by the 1958 Convention on the Continental Shelf, cf. Article 1. The Government of Denmark does not at present enter into the question of what is the status and what are the rights of Jan Mayen under international law.

273. Entitlement, however, must be distinguished from delimitation. The above-mentioned provisions deal exclusively with the entitlement of islands to maritime zones, whereas no specific provisions regulate delimitation questions involving islands. Reference therefore has to be made to the provisions which in general lay down the principles to be applied when the question of delimitation arises, i.e., Article 6 of the 1958 Convention and, in particular, Articles 74 and 83 of the 1982 Convention.

The delimitation aspect

274. With regard to Article 6 of the Convention of 29 April 1958 on the Continental Shelf, notably concerning the interpretation of the term "special circumstances", it appears from the travaux préparatoires that what the International Law Commission particularly had in mind in phrasing that term was special geographical factors, e.g. the influence of small islands on the delimitation of the con-

I 7

tinental shelf between two States situated opposite (or adjacent) to each other. In the comments on Article 72 of the ILC draft (corresponding to what later became Article 6 of the Convention on the Continental Shelf) it is stated:

> "... provision must be made for departures" (i.e., from the equidistance line) "necessitated by any exceptional configuration of the coast, as well as by the presence of islands or of navigable channels. This case may arise fairly often, so that the rule adopted is fairly elastic". (Yearbook of the International Law Commission, 1956, II, p. 300).

275. During the negotiations at Geneva in March-April 1958 prior to the adoption of *inter alia* the Convention on the Continental Shelf it was likewise clearly stated that among the geographical factors it was notably the problem of the relative weight of small islands in connection with delimitation which had given rise to the incorporation in Article 6 of the term "special circumstances", cf. *inter alia* Official Records, Vol. VI, Doc. A/CONF. 13/42, pp. 93–95. In the course of its deliberations on this question the Conference also discussed the desirability of referring specifically to islands in the text. This idea was abandoned, however, because a more elastic wording ad modum the one proposed by the ILC was found to be preferable.

276. The strengthening of the concept of "equity" which took place during UNCLOS III in the various drafts of the Convention on the Law of the Sea, 1982, at the expense of the equidistance principle was to a considerable degree based on the discussions of the legal status of islands.

A. Case Law

277. The presence of islands has played an important rôle in international judicial practice. Different types of islands have been involved in the cases decided upon by the International Court of Justice as well as by courts of arbitration covering a range of islands of different size and location, and different status with regard to population, economic life and political independence.

278. In the decision by the Court of Arbitration in the case concerning the *Delimitation of the Continental Shelf between the United Kingdom and France, 1977,* the issue with regard to *the Channel Islands* was described in the following way in paragraphs 184, 187 and 195 respectively:

> "184. ... Possessing a considerable population and a substantial agricultural and commercial economy, they are clearly territorial and political units which have their own separate existence, and which are of a certain importance in their own right separately from the United Kingdom....According to this information they undoubtedly enjoy a very large measure of political, legislative, administrative and economic autonomy; so much so that the United Kingdom asks the Court to regard them as, in effect, distinct island States for the purpose of determining the continental shelf appurtenant to them."
> "187. The legal framework within which the Court must decide the course of the boundary (or boundaries) in the Channel Islands region is, therefore, that of two opposite States one of which possesses island territories close to the coast of the other State. To state this conclusion is not, however, to deny all relevance to the size and importance of the Channel Islands which, on the contrary, may properly be taken into account in balancing the equities in this region....."
> "195. ... In other words, the question is whether the Channel Islands should be given the full benefit of the application of the principle of natural prolongation in the areas to their north and northwest or whether their situation close to the mainland of France requires, on equitable grounds, some modification of the application of the principle in those areas..."

279. After having thus identified the factual and legal framework for its decision concerning the Channel Islands region the Court of Arbitration went on to evaluate the concrete situation (paragraphs 196 – 199):

> "196. ...The presence of these British islands close to the French coast, if they are given full effect in delimiting the continental shelf, will manifestly result in a substantial diminution of the area of continental shelf which would otherwise accrue to the French Republic. This fact by itself appears to the Court to be, *prima facie*, a circumstance creative of inequity and calling for a method of delimitation that in some measure redresses the inequity. If this conclusion is tested by applying the equidistance-special circumstances rule of Article 6, instead of the rules of customary law, it appears to the Court that the presence of the Channel Islands close to the French coast must be considered, *prima facie*, as constituting a "special circumstance" justifying a delimitation other than the median line proposed by the United Kingdom."
> "197. ...The United Kingdom, moreover, maintains that the specific features of the Channel Islands region militate posi-

tively in favour of the delimitation it proposes. It invokes the particular character of the Channel Islands as not rocks or islets but populous islands of a certain political and economic importance; it emphasizes the close ties between the islands and the United Kingdom and the latter's responsibility for their defence and security;..."

"198. The Court accepts the equitable considerations invoked by the United Kingdom as carrying a certain weight; and, in its view, they invalidate the proposal of the French Republic restricting the Channel Islands to a six-mile enclave around the islands, consisting of a three-mile zone of continental shelf added to their territorial sea. They do not, however, appear to the Court sufficient to justify the disproportion or remove the imbalance in the delimitation of the continental shelf as between the United Kingdom and the French Republic which adoption of the United Kingdom's proposal would involve. The Court therefore concludes that the specific features of the Channel Islands region call for an intermediate solution that effects a more appropriate and a more equitable balance between the respective claims and interests of the Parties."

"199. ...The case is quite different from that of small islands on the right side of or close to the median line, and it is also quite different from the case where numerous islands stretch out one after another long distances from the mainland.... The Channel Islands are not only "on the wrong side" of the mid-Channel median line but wholly detached geographically from the United Kingdom."

280. The Court of Arbitration concluded by drawing a median line between the opposite mainlands and a boundary for the Channel Islands extending to 12 nautical miles from the baselines, thereby creating an enclave within the French continental shelf area. Thus their geographical location, as isolated islands, "on the wrong side of the median line", *inter alia* led the Court to qualify them as "special circumstances" and to consider them as being creative of inequity.

281. This decision is particularly significant when one considers the character of the Channel Islands: They have a total land area of 195 square kilometres, a population of 130,000, a substantial independent economic life and a high degree of autonomy. These aspects were certainly taken into consideration by the Court of Arbitration as is seen *inter alia* from paragraphs 184, 187, 197 and 198 quoted above. But these factors only sufficed to invalidate the proposal of France restricting the Channel Islands to a six-mile enclave, not to justify an adoption of the United Kingdom's proposal for a

median line calculated from these islands. As the Court of Arbitration stated in paragraph 199, the Channel Islands were not only "on the wrong side" of the mid-Channel median line but were wholly detached geographically from the United Kingdom. In a geographical situation of that nature the important character of the islands, *although taken into consideration, obviously was not regarded as* justifying an extension of the shelf attaching to the islands to the north, so as to reduce the shelf area appertaining to the French mainland.

282. The other part of the decision of the Court of Arbitration concerned *the Atlantic Region.* This geographical context is not equally parallel to that of the present case, but a number of considerations in the decision concerning the status of islands are fully valid also to the present delimitation. Reference is made in particular to the following excerpts from paragraphs 243 – 245 and 251 of the decision:

> "243. The essential point, therefore, is to determine whether, in the actual geographical circumstances of the Atlantic region, the prolongation of the Scilly Isles some distance further westwards than the island of Ushant renders "unjust" or "inequitable" an equidistance boundary delimited from the baselines of the French and United Kingdom coasts....The question is whether, in the light of all the pertinent geographical circumstances, that fact amounts to an inequitable distortion of the equidistance line producing disproportionate effects on the areas of shelf accruing to the two States."
> "244. ...It may also be urged that the very fact of the projection of the United Kingdom land mass further into the Atlantic region has the natural consequences of rendering greater areas of continental shelf appurtenant to it. Nevertheless, when account is taken of the fact that in other respects the two States abut on the same continental shelf with coasts not markedly different in extent and broadly similar in their relation to that shelf, a question arises as to whether giving full effect to the Scilly Isles in delimiting an equidistance boundary out to the 1,000-metre isobath may not distort the boundary and have disproportionate effects as between the two States ...".
> "245. The Court thus recognizes that the position of the Scilly Isles *west-south-west of the Cornish peninsula constitutes a* "special circumstance" justifying a boundary other than the strict median line..."
> "251. A number of examples are to be found in State practice of delimitations in which only partial effect has been given to offshore islands situated outside the territorial sea of the main-

land. The method adopted has varied in response to the varying geographical and other circumstances of the particular cases; but in one instance, at least, the method employed was to give half, instead of full, effect to the offshore island in delimiting the equidistance line... The distance that the Scilly Isles extend the coastline of the mainland of the United Kingdom westwards onto the Atlantic continental shelf is slightly more than twice the distance that Ushant extends westwards the coastline of the French mainland. The Court, without attributing any special force as a criterion to this ratio of the difference in the distances of the Scillies and Ushant from their respective mainlands, finds in it an indication of the suitability of the half-effect method as a means of arriving at an equitable delimitation in the present case. The function of equity, as previously stated, is not to produce absolute equality of treatment, but an appropriate abatement of the inequitable effects of the distorting geographical feature. In the particular circumstances of the present case the half-effect method will serve to achieve such an abatement of the inequity..."

As clearly emerges from these statements, due attention was paid to the distorting effect of the Scilly Isles in the concrete geographical context and, consequently, the half-effect method was applied in order to abate the inequitable effects of the distorting geographical feature.

283. In relation to Norway's claim for a median line to Jan Mayen it is noteworthy that the Scilly Isles are situated relatively close to the English mainland (21 to 31 nautical miles) and have a population of approximately 2,500.

284. The Judgment of the Court in the case concerning the *Delimitation of the Continental Shelf between Tunisia and Libya, 1982,* treated the question of islands in paragraph 79:

"... the presence of the island of Jerba and of the Kerkennah Islands and the surrounding low-tide elevations is a circumstance which clearly calls for consideration. ... the Court cannot accept the exclusion in principle of the island of Jerba and the Kerkennah Islands from consideration. The practical method for the delimitation to be expounded by the Court hereafter is in fact such that, in the part of the area to be delimited in which the island of Jerba would be relevant, there are other considerations which prevail over the effect of its presence; the existence and position of the Kerkennah Islands and surrounding low-tide elevations, on the other hand, are material." (*I.C.J. Reports 1982,* pp. 63 – 64, para. 79).

For purposes of choosing the practical method of delimitation in the case, *the Court divided the area to be delimited into two sectors.* With the following reasoning the Court disregarded the island of Jerba, which might have been relevant for the delimitation of the area closer to the coast at Ras Ajdir:

> "... It should also not be lost sight of that, as explained above, the Court is at this stage confining its attention to the delimitation of the sea-bed area which is closer to the coast at Ras Ajdir, so that in assessing the direction of the coastline it is legitimate to disregard for the present coastal configurations found at more than a comparatively short distance from that point, for example the island of Jerba." (*I.C.J. Reports 1982,* p. 85, para. 120).

In delimiting the areas farther off-shore, the Court regarded the *Kerkennah Islands as a relevant circumstance to be taken into account:*

> "In the view of the Court, the relevant circumstances of the area which would not be attributed sufficient weight if the 26° line were prolonged seaward much beyond the 34° parallel of latitude are, first, the general change in the direction of the Tunisian coast already mentioned; and secondly, the existence and position of the Kerkennah Islands ..." (*I.C.J. Reports 1982,* p. 88, para. 127).
>
> "... To the east of this line, however, lie the Kerkennah Islands, surrounded by islets and low-tide elevations, and constituting by their size and position a circumstance relevant for the delimitation, and to which the Court must therefore attribute some effect. The area of the islands is some 180 square kilometres; they lie some 11 miles east of the town of Sfax, separated from the mainland by an area in which the water reaches a depth of more than four metres only in certain channels and trenches ... However, the Court considers that to cause the delimitation line to veer even as far as to 62°, to run parallel to the island coastline, would, in the circumstances of the case, amount to giving excessive weight to the Kerkennahs." (*I.C.J. Reports 1982,* p. 88, para. 128).
>
> "The Court would recall however that a number of examples are to be found in State practice of delimitations in which only partial effect has been given to islands situated close to the coast; the method adopted has varied in response to the varying geographical and other circumstances of the particular case. One possible technique for this purpose, in the context of a geometrical method of delimitation, is that of the "half-ef-

> fect" or "half-angle". Briefly, the technique involves drawing two delimitation lines, one giving to the island the full effect attributed to it by the delimitation method in use, and the other disregarding the island totally, as though it did not exist. The delimitation line actually adopted is then drawn between the first two lines, either in such a way as to divide equally the area between them , or as bisector of the angle which they make with each other, or possibly by treating the island as displaced toward the mainland by half its actual distance therefrom. Taking into account the position of the Kerkennah Islands, and the low-tide elevations around them, the Court considers that it should go so far as to attribute to the Islands a "half-effect" of a similar kind..." (*I.C.J. Reports 1982*, p. 89, para. 129).

285. In relation to the present delimitation with Norway, it is noteworthy that the *1982 Judgment*, for purposes of clarifying the practical methods of delimitation, totally disregards the island of Jerba, almost twice the size of Jan Mayen and with a considerable permanent population, and that the Kerkennah Islands, populated as well, are given only "half-effect".

286. In the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area, 1984*, the Chamber constituted by the International Court of Justice was requested to determine the course of a *single boundary* for the continental shelf areas and the fisheries zones of Canada and the United States in the Gulf of Maine. As far as the actual drawing of the line of delimitation is concerned the Chamber pointed out:

> "... the potential disadvantages inherent in any method which takes tiny islands, uninhabited rocks or low-tide elevations, sometimes lying at a considerable distance from terra firma, as basepoint for the drawing of a line intended to effect an equal division of a given area. If any of these geographical features possess some degree of importance, there is nothing to prevent their subsequently being assigned whatever limited corrective effect may equitably be ascribed to them, but that is an altogether different operation from making a series of such minor features the very basis for the determination of the dividing line, or from transforming them into a succession of basepoints for the geometrical construction of the entire line. It is very doubtful whether a line so constructed could, in many concrete situations, constitute a line genuinely giving effect to the criterion of equal division of the area in question, espe-

cially when it is not only a terrestrial area beneath the sea which has to be divided but also a maritime expanse in the proper sense of the term, since in the latter case the result may be even more debatable." (*I.C.J. Reports 1984*, p. 329, para. 201).

Consequently, when drawing the line of delimitation, the Chamber had to decide to what extent the Canadian Seal Island and certain islets in its vicinity should influence the calculation:

"... The Chamber considers that Seal Island (together with its smaller neighbour, Mud Island), by reason both of its dimension and, more particularly, of its geographical position, cannot be disregarded for the present purpose. According to the information available to the Chamber it is some two-and-a-half miles long, rises to a height of some 50 feet above sea level, and is inhabited all year round. It is still more pertinent to observe that as a result of its situation off Cape Sable, only some nine miles inside the closing line of the Gulf, the island occupies a commanding position in the entry to the Gulf. The Chamber however considers that it would be excessive to treat the coastline of Nova Scotia as transferred south-west-wards by the whole of the distance between Seal Island and that coast, and therefore thinks it appropriate to give the island half effect, ..." (*I.C.J. Reports 1984*, pp. 336–337, para. 222).

However, the Chamber observed in this connection:

"... Since it is only a question of adjusting the proportion by reference to which the corrected median line is to be located, the result of the effect to be given to the island is a small transverse displacement of that line, not an angular displacement; and its practical impact therefore is limited." (*I.C.J. Reports 1984*, p. 337, para. 222).

Even though, as the Chamber observed, the practical impact of giving Seal Island only half-effect is limited, the fact remains that an island which is inhabited all year round and which occupies a strategic position was given only half-effect.

287. In the *Libya/Malta case, 1985*, the issue was the delimitation of the continental shelf areas between a mainland, on the one hand, and an island *State*, on the other. That particular aspect was commented on by the Court in the following way:

"In the view of the Court, it is not a question of an "island

State" having some sort of special status in relation to continental shelf rights; indeed Malta insists that it does not claim such status. It is simply that Malta being independent, the relationship of its coasts with the coasts of its neighbours is different from what it would be if it were a part of the territory of one of them. In other words, it might well be that the sea boundaries in this region would be different if the islands of Malta did not constitute an independent State, but formed a part of the territory of one of the surrounding countries. This aspect of the matter is related not solely to the circumstances of Malta being a group of islands, and an independent State, but also to the position of the islands in the wider geographical context, particularly their position in a semi-enclosed sea." (*I.C.J. Reports 1985*, p. 42, para. 53).

The Court commented in the following way on the importance for the delimitation of the general geography of the region:

"... the Maltese islands appear as a minor feature of the northern seaboard of the region in question, located substantially to the south of the general direction of that seaboard, and themselves comprising a very limited coastal segment. From the viewpoint of the general geography of the region, this southward location of the coasts of the Maltese islands constitutes a geographical feature which should be taken into account as a pertinent circumstance; its influence on the delimitation line must be weighed in order to arrive at an equitable result." (*I.C.J. Reports 1985*, p. 50, para. 69).

The Court's Judgment in the case accorded limited effect to Malta in spite of the fact that Malta is an island State with a considerable population and economic life (*I.C.J. Reports 1985*, pp. 56 - 57, para. 79).

288. International judicial practice in the aforementioned cases is based on the same considerations as those which in Denmark's view should form the basis of determining the maritime delimitation in the waters between Greenland and Jan Mayen. They support Denmark's view that, in deciding where the boundary line in relation to an extensive mainland should be drawn in order to achieve an equitable solution, only limited or no effect could be given to a small, uninhabited island.

B. State Practice

289. In State practice there is evidence of a trend similar to that seen in international judicial practice:

(1) The example closest to the present dispute is provided by the single line of maritime delimitation drawn between Iceland and Jan Mayen where the distance between the respective baselines is also less than 400 nautical miles. The boundary line respects Iceland's 200-mile economic zone covering both the fishery zone and the continental shelf area. Jan Mayen has not been allowed to reduce Iceland's 200-mile zone. The most relevant factor in this respect – besides the actual establishment of a single line of delimitation using the distance criterion of 200 miles – is Norway's recognition of Iceland's 200-mile economic zone. The Agreement dated 28 May 1980 (Annex 16) does not in its operative provisions indicate that the two Parties have come to an agreement about fixing the delimitation line at a distance of 200 nautical miles from Iceland's coast. The operative part of the Agreement deals with practical questions concerning the cooperation between the two Parties in fishing matters (Article 1), including the establishment of a joint fishery commission (Article 2); it also establishes a conciliation commission of three persons with the task of recommending a line of delimitation with regard to the continental shelf area between Iceland and Jan Mayen (Article 9). It is only in the preamble to the Agreement that reference is made to the 200-mile distance criterion. Not, however, as something which the two Parties have agreed upon, but as a unilateral Norwegian recog*nition of Iceland's right to an economic zone of* 200 *nautical* miles (preambular paragraph 5), taking account of developments at the UNCLOS III (preambular paragraph 8) and recognizing at the same time Iceland's strong economic dependence on fisheries and the relevance of drawing a line of delimitation with regard to both fisheries and to the continental shelf area (preambular paragraphs 4 and 6). In its "Report and Recommendations to the Government of Iceland and Norway of the Conciliation Commission on the Continental Shelf Area between Iceland and Jan Mayen, Washington D.C. 1981" *(International Legal Materials,* Volume XX, No. 4, July 1981), the Conciliation Commission recommended that the delimitation line for the continental shelf should coincide with the 200-mile economic zone proclaimed by Iceland. The recommendation was accepted by the two Governments cf. paragraph 78 and Annex 28.

In other words, the Agreement is based on the premise that Iceland has the right to a 200-mile economic zone in accordance with contemporary international law, and that the area of Jan Mayen's entitlement may not encroach into this zone. This is exactly the same solution which Denmark considers to be reasonable and just for the delimitation of the area between Greenland and Jan Mayen. The logical conclusion from a comparison with this precedent, which can hardly be more relevant, is that Greenland is also entitled to a full 200-mile fishery zone and continental shelf area.

At this point it is of particular interest to note that during the debate in the Norwegian Parliament on 6 June 1980 concerning parliamentary approval of the Agreement of 28 May 1980 with Iceland, the Chairman of the Foreign Affairs Committee *inter alia* stated:

> "From a Norwegian point of view it is not difficult to see that Norway has made considerable concessions to Iceland ... Another Norwegian concession is that we today accept as an established fact that the Icelandic fishery zone has full extent, also into the Jan Mayen area. This means a corresponding reduction of the Norwegian zone ... The main reason for the Committee's approval of the Agreement is evident; no agreement would have resulted in an overt conflict between Iceland and Norway. Norway would have had to unilaterally establish its own zone around Jan Mayen. Iceland would not have respected that zone. Neither would any other country have respected it. ..." *(Stortingstidende 1979/1980, page 3612).*

It thus seems obvious that doubts existed also on the Norwegian side about the legitimacy of establishing a fishery zone around Jan Mayen giving full effect to that island in relation to other States.

(2) By an Agreement of 18 April 1988 between Sweden and the USSR on the delimitation of the continental shelf and of the Swedish fishing zone and the Soviet economic zone in the Baltic Sea it was decided to delimit the maritime areas between the Swedish island of Gothland and the USSR by dividing a disputed area, situated between a median line and a boundary line of 12 nautical miles off Gothland, in a manner by which Sweden was accorded about 75 per cent. and the USSR about 25 per cent. of the area. By this delimitation the island of Gothland was thus given a reduced effect in relation to the USSR, despite the fact that Gothland is an island of considerable size,

with a high population density, and (unlike Jan Mayen) is situated closer to the mainland of Sweden than to that of the USSR (Annex 29).

(3) In a Treaty of 14 September 1988 between Denmark and the German Democratic Republic on delimitation of the continental shelf and the fishing zones in the Baltic Sea the boundary line fixed between the Danish island of Bornholm, on the one hand, and the German Democratic Republic on the other, deviates from the median line in favour of the German Democratic Republic and at the cost of Bornholm, notwithstanding that Bornholm is an island of a fairly considerable size and with a relatively high population density (Annex 30).

(4) By an Agreement of 10 February 1989 between Poland and Sweden on delimitation of the continental shelf and the fishery zones between Poland and Sweden it was decided to delimit the maritime areas between Poland and Sweden by dividing a disputed area, situated between a median line and a boundary line of 12 nautical miles off Gothland, in a manner by which Sweden was accorded about 75 per cent. and Poland about 25 per cent. of the area. Also by this delimitation the island of Gothland was thus given reduced weight in relation to Poland, regardless of the fact that Gothland is an island of considerable size and with a high population density and much closer to Sweden than to Poland (Annex 31).

*

(5) State practice also provides examples of islands having been accorded full effect in connection with delimitation in relation to a mainland.

Such a case is the Agreement of 15 June 1979 between Denmark and Norway concerning the delimitation of the continental shelf in the area between the Faroe Islands and Norway and concerning the boundary between the fishery zone near the Faroe Islands and the Norwegian economic zone. By that Agreement a median line was established, this being the natural and equitable solution in that specific case where the segment of the relevant coastal front of the Faroe Islands and the segment of the relevant Norwegian coastal front are of roughly the same length (Annex 32).

(6) Another case is the Agreement of 9 November 1984 concerning delimitation of the continental shelf and the fishing zones between Denmark and Sweden. By that Agreement the Parties

reached accord on a delimitation by which all the Danish islands concerned (Læsø, Anholt, Hesselø, and Bornholm) were given full effect. It should be added, however, that the three first mentioned islands were not looked at in isolation but as part of a larger archipelagic formation. Recognizing that in the absence of special circumstances offering grounds for any other solution (the distances in the area are rather limited) the Parties agreed that this approach to the matter of delimitation represented the best means of attaining an equitable and just solution (Annex 33)[5]).

(7) As a particular case mention should be made of the Norwegian Bear Island, the southernmost island in the Svalbard Archipelago[6]). Bear Island is situated less than 400 nautical miles north of the Norwegian mainland.
On 3 June 1977 Norway, by a Royal Decree, established a 200-mile fishery protection zone around Svalbard, including Bear Island (Annex 35). However, it was decided in the Decree that the protection zone should be limited, when necessary (i.e., south of Bear Island), by the 200-mile economic zone of the Norwegian mainland. Thus, Bear Island was given no effect in the delimitation vis-à-vis the Norwegian mainland.

290. Denmark is of the opinion that although the examples mentioned clearly demonstrate that each case concerning delimitation of maritime areas between an island and a mainland has its own special circumstances of relevance for achieving an equitable solution, State practice does not support the Norwegian claim that, according to international law, Jan Mayen is entitled to a median line vis-à-vis Greenland.

291. In both international judicial practice and State practice recognition of the diversity of factual situations has led to widely differing solutions. There are cases in which an island has been accorded full effect in relation to an opposite-lying mainland; and there are cases in which an island opposite to a mainland has had to renounce a greater or lesser part of the maritime zones to which it would *otherwise* have been entitled under the rules of international law because a different result would have been inequitable. But

---

[5]) *The text of the Declaration of 30 January 1932 between Denmark and Sweden concerning the Boundaries of the Sound, mentioned in Article 4 of the Agreement of 9 November 1984, is attached as Annex 34. From the text of that Declaration it will be seen that the island of Ven was disregarded in connection with the establishment of the boundary line in the Sound.*

[6]) *Concerning the special legal régime provided for the Svalbard (Spitzbergen) Archipelago reference is made to the Treaty on Spitzbergen of 9 February 1920, cf. League of Nations, Treaty Series, Volume II, No. 41.*

there are no cases in which a small island, devoid of a permanent population, has been regarded as entitled to a median line vis-à-vis a mainland territory as Greenland. On the contrary there are cases where such islands have had no effect on the 200-mile zone of an opposite-lying mainland, cf. Jan Mayen/Iceland and Bear Island/ Norway.

292. Since the adoption of the 1958 Convention on the Continental Shelf it has been acknowledged in judicial practice and State practice that *inter alia* the size, barrenness and remoteness of an island are relevant factors in a delimitation situation. Such factors were covered by the concept of "special circumstances" in that Convention. In contemporary international law they are relevant circumstances to be taken into account in order to achieve an equitable solution. Thus, the influence of such factors is nothing new, and the result will often be identical no matter whether reference is made to one or the other of the delimitation criteria described above. The only difference is that the principle of equity is conceived as having been further strengthened.

*

293. In the light of the present and foregoing Sections the rule applicable to the delimitation between Greenland and Jan Mayen is the one which is appropriate to bring about an equitable result. In order to substantiate that rule the following Section will describe those factors which the Government of Denmark believes must have a particular bearing on the result.

Section 3. The Relevant Factors in the Present Case

294. As shown in Part I of this Memorial, a number of factors of a geographical, demographic, economic, geological, political/ constitutional and cultural nature can be identified as characteristic of Greenland and of Jan Mayen. In this Section those factors will be highlighted which, in the Danish view, seem to be of particular importance for achieving an equitable solution with regard to the delimitation of the maritime areas in question.

A. The Geographical Factor

295. Jan Mayen is situated in isolation from the rest of Norway, cf. Map II. The distance between Jan Mayen and the Nor-

wegian mainland is about 550 nautical miles, while the distance between Jan Mayen and Greenland is only about 250 nautical miles. The distance between Jan Mayen and Norway is thus more than twice the distance between Greenland and Jan Mayen. The geographical situation is to a large extent parallel to the situation described in the *Channel Islands case*, cf. paragraph 280. Jan Mayen is situated "on the wrong side" of a median line between Greenland and the Norwegian mainland and it is indeed geographically detached from it. A diminution of Greenland's maritime zone because of the presence of Jan Mayen seems difficult to reconcile with the reasoning referred to in that case.

296. The area of Jan Mayen is approximately 380 square kilometres, while the area of Greenland is approximately 2,200,000 square kilometres. Of this area about 342,000 square kilometres are icefree coastland. Greenland is thus about 5,800 times larger than Jan Mayen. The icefree area is about 900 times larger than Jan Mayen and exceeds the total area of the Kingdom of Norway which is approximately 325,000 square kilometres (excluding Svalbard) by about 17,000 square kilometres.

297. The length of the western coastal front of Jan Mayen is about 54 kilometres. The length of the eastern relevant coastal front of Greenland is about 532 kilometres, i.e., a ratio of 9.8 to 1 in favour of Greenland, cf. paragraphs 30–35.

298. *The total fishery zone of Jan Mayen*, i.e., around the whole of the island, would be about 320,400 square kilometres if it were fixed in relation to Greenland according to the median line principle. If a full zone of 200 nautical miles were accorded Greenland, Jan Mayen's total fishery zone would still be about 254,000 square kilometres. This is far more than the corresponding areas of a number of European States with coastlines much longer than Jan Mayen's[7]).

299. *The total fishery zone of Greenland* is very roughly about 2,000,000 square kilometres. Accordingly the proportion of land

[7]) *For comparison the following examples from the northern part of Europe can be mentioned:*

Belgium:	*200-mile fishing zone*	*2,700 square km*
Federal Republic of Germany:	*200-mile fishing zone*	*40,800 square km*
Netherlands:	*200-mile fishing zone*	*84,700 square km*
Sweden:	*200-mile fishing zone*	*155,300 square km*

The figures have been provided by the Office for Ocean Affairs and the Law of the Sea of the United Nations and are not based on information from the States concerned.

area to fishery zone is 2,000,000 to 2,200,000, i.e., just under 1 square kilometre zone per square kilometre land.

300. For Jan Mayen the ratio would be 320,400 to 380 if the median line were applied in relation to Greenland, i.e., about 843 square kilometres zone per square kilometre land. With full respect of a 200-mile zone to Greenland the ratio for Jan Mayen will be 254,000 to 380 i.e., about 668 square kilometres zone per square kilometre land.

301. These figures show unequivocally that giving full effect to Jan Mayen (i.e., a median line delimitation) would entail an entirely unreasonable and inequitable distortion of the division of the maritime area between Greenland and Jan Mayen, purely as a matter of geography. In this context it should be borne in mind that the ice conditions along the coast of Greenland, cf. paragraphs 160 and 184, to a considerable degree limit the area to which there is free access. The disputed area represents the most important fishing ground, within the relevant area, to which there is access during the summertime (July – September).

B. The Population and Socio-Economic Factors

302. Jan Mayen has no population in the proper sense of the word. It does not have and cannot sustain an economic life of its own. According to available information about 25 persons stay temporarily on Jan Mayen. This group of persons consists of meteorologists, engineers and other technicians manning the island's meteorological station, the LORAN C station and the coastal radio station, but there are no fishermen or other settled population. Jan Mayen has no harbour. The Norwegian fishing in the area does not serve to sustain economic life on Jan Mayen. Norwegian fishing must therefore be regarded as irrelevant in so far as delimitation of the maritime area between Jan Mayen and Greenland is concerned. Norwegian fishing vessels in the Jan Mayen area operate from the remote Norwegian mainland. Large scale Norwegian fishing was not commenced in the area between Greenland and Jan Mayen until 1978. The Norwegian fishing cannot be regarded as traditional fishing according to international law in the sense given to that concept, e.g., in the *Fisheries case, 1951*, (*ICJ Reports 1951*, p. 116) between Norway and the United Kingdom or in the *Fisheries Jurisdiction case, 1974*, (*ICJ Reports 1974*, p. 3) between Iceland and the United Kingdom.

303. The total population of Greenland is about 55,000. About six per cent. of the people live in East Greenland. In connection with the consideration of the population factor reference is made to paragraph 278 concerning the rôle of this and other socio-economic factors in the *case between the United Kingdom and France, 1977.*

304. As shown in paragraphs 173–189, fishing and fisheries-related industries are the mainstay of Greenland's economy today. Substantial investments are required to build up a modern fishing fleet, fish-processing industries, plants etc. in Greenland. The obvious prerequisite of such large-scale investments is permanent and indisputable access to exploitable fish resources. Thus, the future of the Greenland fishing industry will be affected by the outcome of the present delimitation.

305. It is generally recognized that heavy dependence on fisheries may be a relevant factor under international law as far as territories like Greenland are concerned. Attention is drawn to the Resolution which was adopted on 26 April 1958 in connection with the Convention of 29 April 1958 on Fishing and Conservation of the Living Resources of the High Seas (*Official Records,* Vol. II, Doc. A/CONF. 13/38, p. 144), by 67 votes (including Norway) to none, with 10 abstentions. The Resolution was designed to safeguard the interests of countries or territories heavily dependent on fisheries in waters bordering on their territorial seas. At the introduction of the Resolution it was underlined that the first preambular paragraph referred in particular to Iceland, the Faroe Islands and Greenland, cf. the afore-mentioned document, p. 45. The paragraph concerned is worded as follows: "Having considered the situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development". This understanding was also clearly expressed during the Second Conference on the Law of the Sea at which the United Kingdom in its intervention made the following observation on this point:

> "The United Kingdom was not unsympathetic towards the special situation of the few countries which were overwhelmingly dependent upon fisheries for their livelihood. In 1958, three countries had been generally recognized as being in that category – Iceland, The Faroes, and Greenland." *(Official Records,* Doc. A/CONF. 19/8, p. 128).

306. In the *Fisheries case, 1951,* between Norway and the United Kingdom concerning the drawing of straight baselines the Court expressly referred to the fact that

"... the inhabitants of the coastal zone derive their livelihood essentially from fishing." *(I.C.J. Reports 1951*, p. 128).

The Court furthermore pointed out in the same case that

"... there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by long usage." *(I.C.J. Reports 1951*, p. 133).

The distance criterion of 200 miles for the exclusive economic zone is based on the same rationale as the drawing of straight baselines, namely that of securing the vital economic needs of the population of the coastal States.

307. The Court's decision in the *Fisheries Jurisdiction case, 1974*, between Iceland and the United Kingdom is also of interest in this connection, even though that case did not concern a delimitation of maritime zones between the two States involved, but the lawfulness of a unilateral extension by Iceland of its fisheries jurisdiction to 50 miles. In its decision the Court stressed "the special dependence of its [the Icelandic] people upon fisheries in the seas around its [Iceland's] coasts for their livelihood and economic development", as one of the factors to be taken into account in the negotiations that the Court decided should be held by the Government of Iceland and the Government of the United Kingdom, pursuant to their mutual obligation to seek an equitable solution of their differences *(I.C.J. Reports 1974*, p. 34, para. 79 (4)(a)). Thus, economic dependence is regarded by the Court as relevant to achieving an equitable solution.

308. Reference is furthermore made to the *Judgment of 30 November 1982 of the Court of Justice of the European Communities* (Case 287/81, European Court Reports 1982, pp. 4053 – 4087) concerning the lawfulness of a management and conservation measure adopted by Denmark on limitation of catches for the fishing zone off Greenland. In that case the Court of Justice of the EEC based its decision *inter alia* on the fact that "the measure was justified by objective considerations relating to the protection of the needs of the coastal population concerned...".

309. Denmark does not believe that, in arguing considerations of this kind before the Court, it is pursuing an approach inconsistent with the Court's own jurisprudence. In the *Libya/Malta case, 1985*, the Court stated:

"... The Court does not however consider that a delimitation should be influenced by the relative economic position of the two States in question, in such a way that the area of continental shelf regarded as appertaining to the less rich of the two States would be somewhat increased in order to compensate for its inferiority in economic resources. Such considerations are totally unrelated to the underlying intention of the applicable rules of international law. It is clear that neither the rules determining the validity of legal entitlement to the continental shelf, nor those concerning delimitation between neighbouring countries, leave room for any considerations of economic development of the States in question. While the concept of the exclusive economic zone has, from the outset, included certain special provisions for the benefit of developing States, those provisions have not related to the extent of such areas nor to their delimitation between neighbouring States, but merely to the exploitation of their resources. The natural resources of the continental shelf under delimitation "so far as known or readily ascertainable" might well constitute relevant circumstances which it would be reasonable to take into account in a delimitation, as the Court stated in the North Sea Continental Shelf cases *(I.C.J. Reports 1969,* p. 54, para. 101 (D)(2)). Those resources are the essential objective envisaged by States when they put forward claims to sea-bed areas containing them. In the present case, however, the Court has not been furnished by the Parties with any indications on this point." *(I.C.J. Reports 1985,* p. 41, para. 50).

310. The Government of Denmark understands this *dictum* by the Court to indicate that it is not reasonable or equitable in maritime delimitation cases to make a point of comparing the GNP's of the disputing Parties. A country which is poor today may be rich tomorrow.

311. The *dictum* in the *Libya/Malta case* does not, however, seem to apply to the present case, where a known resource, namely the capelin resource, exists in the disputed area. With regard to that kind of resource which with conservation can last indefinitely, and which by definition is a relevant economic factor in the livelihood of a given population, in particular one like Greenland's which is overwhelmingly dependent on the fishing resources, the economic argument seems to be a valid one.

312. It also seems evident that in State practice dealing with negotiated settlements of maritime boundaries covering both the continental shelf and the fishing zone the economic aspects involved

play a decisive rôle in the search for mutually acceptable solutions based on equity.

313. Another factor related to that of the population aspect deserves to be mentioned. As pointed out in Part I, Chapter II, Section 1 on History, the people of Greenland feel closely attached to their land and the surrounding sea which for approximately 4,500 years, and against heavy odds, have sustained the life of the people. Even the ice-belt has been and is still used as a traditional hunting area, treated as if it were the mainland itself. This feeling of attachment is of course not particular to the population of Greenland. All peoples of the world feel attached to the surroundings in which they grew up. But this point has to be stressed within the context of the present case. Like the *opinio juris* in the establishment of customary law, this factor – which may be named the cultural factor – represents a subjective element of major influence in the following sense: It would be difficult if not impossible for the Greenlanders to understand why the sea area off the coast of East Greenland which lies within the 200-mile boundary established by the international community as belonging to a coastal State should be curtailed in deference to the interests of the people of a foreign, highly developed industrial State living more than 1,500 kilometres from their shores. Their reaction would be the same as the reaction of the Icelandic people, who could not accept any limitation in their 200-mile economic zone vis-à-vis Jan Mayen.

C. The Conduct of the Parties

314. This factor is relevant as evidence of the attitude of the Parties to the present delimitation case. In particular national legislation and treaties with a third State provide such evidence – as do also, of course, the eight years of negotiation preceeding Denmark's Application to the Court.

315. As far as the national legislation of Denmark and Norway is concerned it has already been mentioned in paragraph 223 that both the Danish Act of 17 December 1976 which formed the basis of the Order of 14 May 1980 on the extension of Greenland's fishery zone north of 67° N from 12 to 200 nautical miles, and the Norwegian Act of 17 December 1976 which formed the basis of the Norwegian Royal Decree of 23 May 1980 establishing a 200-mile fishery zone around *Jan Mayen*, were based on the assumption that the rules contained at that time in the draft texts of the Convention on the Law of the Sea, 1982, concerning an exclusive economic zone did as early as that date (1976) express the general practice of States.

It has also been mentioned in paragraph 233 that in the opinion of Denmark, a State establishing 200-mile fishery zones by reference to this development in international law, has implicitly by its conduct undertaken the obligation to respect, in its relationship with other States, the provisions relating to delimitation of such zones.

316. Furthermore, reference is made to the Norwegian Royal Decree of 3 June 1977 dealing with Regulations on the Fishery Protection Zone around Svalbard (Annex 35). By that Decree, in delimiting Svalbard's 200-mile fishery protection zone around *Bear Island,* which is the only part of Svalbard lying within 400 nautical miles of the Norwegian mainland, the 200-mile economic zone off the Norwegian mainland has been fully respected.

317. Regarding treaty practice reference has already been made to the Agreements between Iceland and Norway of 28 May 1980 concerning Fishery and Continental Shelf Questions, and of 22 October 1981 concerning the Continental Shelf in the Area between Iceland and Jan Mayen. These agreements indicate a pattern of conduct by Norway which must be considered of relevance in the present case.

318. In the case of Greenland there exists no other situation in which a delimitation has been effected or will have to be effected in the future between Greenland and an isolated island like Jan Mayen. Consequently no pattern of conduct in this respect can be pointed at as far as Greenland/Denmark is concerned.

319. In conclusion it would be natural to include among the relevant factors in the present case the conduct of Norway, especially the unilateral Norwegian delimitation of the boundary around Bear Island and Norway's bilateral agreements with Iceland over the same island which is the subject of the present dispute.

By a parity of reasoning Norway, having recognized that Jan Mayen or, by analogy, Bear Island is not entitled to a maritime zone such as to diminish the 200-mile zone of a populated, neighbouring territory, cannot deny that same principle of law in its relations with neighbouring Greenland.

D. The Proportionality Factor

320. It is now well established in international law that proportionality plays an important role in the process of achieving an equitable delimitation. This is demonstrated in particular by the

jurisprudence which over the past 20 years has gradually developed and identified the concept and the rôle of proportionality.

321. In the *North Sea Continental Shelf cases, 1969*, this was expressed in the following way by the Court, which also included the element of proportionality among the factors to be taken into account in the course of the negotiations of the Parties:

> "A final factor to be taken account of is the element of a reasonable degree of proportionality which a delimitation effected according to equitable principles ought to bring about between the extent of the continental shelf appertaining to the States concerned and the lengths of their respective coastlines, - ..." *(I.C.J. Reports 1969*, p. 52 para. 98).

This pronouncement signifies that, for the purpose of achieving an equitable result, it is necessary to aim at a rough correspondence between the ratio of the lengths of the Parties' coasts and the ratio of the respective maritime areas attributed to each of them.

322. The Court, in 1969, described proportionality not as a mere test but as a factor that had to be taken into account even before the selection of the appropriate delimitation method.

323. The Court of Arbitration in the case concerning the *Delimitation of the Continental Shelf between the United Kingdom and France, 1977*, interpreted the Court's pronouncement in the *North Sea Continental Shelf cases* narrowly when it assumed that it was only "the particular geographical situation of three adjoining States, situated on a concave coast" which gave relevance to the criterion of proportionality, cf. paragraph 99 of the Arbitral Award. For that reason the Court of Arbitration described the rôle of the proportionality factor *inter alia* in the following manner (para. 100):

> "... The concept of "proportionality" merely expresses the criterion or factor by which it may be determined whether such a distortion results in an inequitable delimitation of the continental shelf as between the coastal States concerned. The factor of proportionality may appear in the form of the ratio between the areas of continental shelf to the lengths of the respective coastlines, as in the *North Sea Continental Shelf* cases. But it may also appear, and more usually does, as a factor for determining the reasonable or unreasonable -the equitable or inequitable - effects of particular geographical features or configurations upon the course of an equidistance-line boundary."

324. On the other hand, the Court of Arbitration did compare the lengths of the mainland coasts of the Parties and found that they were of comparable length. This was the explicit ground upon which the Court based its adoption of a median line, as the basic boundary throughout the English Channel. It was only in the areas of the Channel Islands and the South-Western Approaches that this basic equality and symmetry were replaced by the exceptional configurations of the Channel Islands and the Scilly Isles. To accommodate these exceptional configurations the Court drew a 12-mile enclave to the north of the Channel Islands and assigned only half-effect to the Isles of Scilly (paragraphs 181, 195, 199, 202, 234, 244). Thus, the proportionality factor in that case, unquestionably influenced the decision, cf. *inter alia* paragraph 181 ("... and the general result is that the coastlines of their mainlands face each other across the Channel in a relation of approximate equality.") and paragraph 244 ("Nevertheless, when account is taken of the fact that in other respects the two States abut on the same continental shelf with coasts not markedly different in extent and broadly similar in their relation to that shelf, ...").

325. The factor of proportionality was also taken into consideration and elaborated upon in the three most recent delimitation Judgments of the International Court of Justice.

326. In the *Tunisia/Libya case, 1982,* the International Court of Justice carefully calculated and studied the ratios of lengths of the relevant coasts of the two States concerned to the sea-bed areas appertaining to each State following the method indicated by the Court. The Court expressly mentioned among the relevant circumstances to be taken into account in order to achieve an equitable delimitation:

> "(5) the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal State and the length of the relevant part of its coast, measured in the general direction of the coastlines, ..." *(I.C.J. Reports 1982,* p. 93, para. 133 B).

327. This decision shows that the Court considered proportionality to be a general factor, applicable to different geographical situations, and not confined to a certain coastal configuration. The subsequent Judgments in the *Gulf of Maine case, 1984,* and *Libya/ Malta case, 1985,* applied proportionality to completely different geographical situations.

328. In the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area, 1984,* the difference between the lengths of the coasts in question corresponded to a ratio of 1.32 to 1 in favour of the United States, a difference which the Chamber of the International Court of Justice *(I.C.J. Reports 1984,* p. 322, para. 184) described as "particularly notable" in comparison with several other cases where the respective lengths of the coasts had been taken into consideration. In paragraph 196 the Chamber went on to state that "a fair measure of weight should be given to a by no means negligible difference within the delimitation area between the lengths of the respective coastlines of the countries concerned".

329. The specific function of the proportionality factor was described in paragraph 218:

> "... it is in the Chamber's view impossible to disregard the circumstance, which is of undeniable importance in the present case, that there is a difference in length between the respective coastlines of the two neighbouring States which border on the delimitation area. Not to recognize this fact would be a denial of the obvious. The Chamber therefore reaffirms the necessity of applying to the median line as initially drawn a correction which, though limited, will pay due heed to the actual situation. In Section VI, paragraph 157, the Chamber has recognized in principle the equitable character of the criterion whereby appropriate consequences may be deduced from any inequalities in the lengths of the two States' respective coastlines abutting on the delimitation area. As the Chamber has expressly emphasized, it in no way intends to make an autonomous criterion or method of delimitation out of the concept of "proportionality", even if it be limited to the aspect of lengths of coastline...." *(I.C.J. Reports 1984,* p. 334, paragraph 218).

Because of the difference in coastal lengths the Chamber moved the median line in the second sector closer to the Canadian coast, thereby crucially affecting the delimitation in the second and third sector.

330. In the *Libya/Malta case, 1985,* the difference in length of the respective coasts was approximately 8 to 1 in favour of Libya, a disparity characterized in the Joint Separate Opinion as "completely "unusual" and unique in delimitation processes" and "surely a particularly relevant factor in this case." *(I.C.J. Reports 1985,* p. 85, para. 25).

331. A most important aspect of this case is that the Court rejected Malta's contention that the concept of proportionality could not be applied to a delimitation between opposite coasts, one of which was a small island and the other an extensive mainland *(I.C.J. Reports 1985,* p. 53, para. 74).

332. The Court acknowledged that "proportionality is certainly intimately related both to the governing principle of equity, and to the importance of coasts in the generation of continental shelf rights" and that "accordingly, the place of proportionality in this case calls for the most careful consideration" *(I.C.J. Reports 1985,* p.43, para. 55).

333. The Court, however, stated that "to use the ratio of coastal lengths as of itself determinative of the seaward reach and area of continental shelf proper to each Party, is to go far beyond the use of proportionality as a test of equity, and as a corrective of the unjustifiable difference of treatment resulting from some method of drawing the boundary line." *(I.C.J. Reports 1985,* pp. 45 - 46, para. 58). But the Court, on the other hand, added that this did not "mean that the "significant difference in lengths of the respective coastlines" is not an element which may be taken into account at a certain stage in the delimitation process."

334. In the latter connection the Court made a distinction between the two aspects of the application of the proportionality concept: the relevance of coastal lengths as a pertinent factor in the construction of the delimitation line and the use of the ratio of coastal lengths as a subsequent test of the equitableness of the delimitation. The Court stated:

> "...there remains, however, the very marked difference in the lengths of the relevant coasts of the Parties ... The Court has already examined the role of proportionality in a delimitation process, and has also referred to the operation, employed in the Tunisia/Libya case, of assessing the ratios between lengths of coasts and areas of continental shelf attributed on the basis of those coasts. It has been emphasized that this latter operation is to be employed solely as a verification of the equitableness of the result arrived at by other means. It is, however, one thing to employ proportionality calculations to check a result; it is another thing to take note, in the course of the delimitation process, of the existence of a very marked difference in coastal lengths, and to attribute the appropriate significance to that coastal relationship, without seeking to define it in quantitative terms which are only suited to the *ex post* assessment of

relationships of coast to area. The two operations are neither mutually exclusive, nor so closely identified with each other that the one would necessarily render the other supererogatory. Consideration of the comparability or otherwise of the coastal lengths is a part of the process of determining an equitable boundary on the basis of an initial median line; the test of a reasonable degree of proportionality, on the other hand, is one which can be applied to check the equitableness of any line, whatever the method used to arrive at that line." *(I.C.J. Reports 1985*, pp. 48 – 49, para. 66).

335. In the context of the present case before the Court, it seems particularly important, in comparison with earlier Judgments, to note some clarifying remarks in this and the following part of the Judgment. First, it is made clear that the lengths of the respective coasts, their "comparability or otherwise", as stated by the Court, are taken into consideration in the determination of the appropriate method to produce a delimitation line and not only during the subsequent test of proportionality intended to verify the equity of the delimitation. Second, the question of a marked difference between the coastal lengths (or their comparability at all) is dealt with at the first of these two stages as one of the relevant circumstances, as is confirmed by this statement of the Court in paragraph 67:

> "... The question as to which coasts of the two States concerned should be taken into account is clearly one which has eventually to be answered with some degree of precision in the context of the test of proportionality as a verification of the equity of the result. Such a test would be meaningless in the absence of a precise definition of the "relevant coasts" and the "relevant area", of the kind which the Court carried out in the *Tunisia/Libya* case. Where a marked disparity requires to be taken into account as a relevant circumstance, however, this rigorous definition is not essential and indeed not appropriate. If the disparity in question only emerges after scrupulous definition and comparison of coasts, it is *ex hypothesi* unlikely to be of such extent as to carry weight as a relevant circumstance." *(I.C.J. Reports 1985*, p. 49, para. 67).

336. Without going into the details of the proportionality test undertaken by the Court in paragraphs 74 and 75 the Government of Denmark wishes finally to recall section B of the Judgment (paragraph 79) which enumerates the circumstances and factors to be taken into account in achieving an equitable delimitation in the case. Two of the three circumstances and factors involve the lengths of the coasts, namely "the disparity in the lengths of the relevant

coasts of the Parties and the distance between them" and "the need to avoid in the delimitation any excessive disproportion between the extent of the continental shelf areas appertaining to the coastal State and the length of the relevant part of its coast, measured in the general direction of the coastlines". Consequently, the delimitation line was drawn by transposing a provisional median line considerably northwards. The solution was not basically dissimilar to the transposition of the median line in the *Gulf of Maine case, 1984.*

337. In the *Libya/Malta case, 1985,* there was a circumstance which prevented the Court from adopting a more complete application of the proportionality factor, namely the proximity of Malta to the Italian coast. The Judgment was based on the hypothesis that, if Malta did not exist, the delimitation line between Sicily and Libya would be a median line. The Court regarded this hypothetical line as the extreme limit for a northward transposition of the boundary, in order to recognize some effect to the existence of Malta.
Such a geographical situation does not exist in the present case since Norway is 550 nautical miles away from Jan Mayen, so that, in the present case, there is scope for a further application of the criterion of proportionality.

338. Thus jurisprudence has made it clear that the proportionality in the lengths of coasts is a highly relevant factor in the delimitation process. First as a relevant circumstance or factor to be taken into consideration together with other criteria in order to adopt a method appropriate for an equitable delimitation line. Second, as a determining factor in the subsequent proportionality test which is aimed at testing the equity of the delimitation line arrived at. At the latter stage the difference of coastal lengths is usually expressed as an arithmetical ratio whereas the former procedure is based on a more general consideration of the comparability of the coasts.

339. To-date the factor of proportionality has mostly been applied in cases concerning the delimitation of continental shelf areas. This simply reflects the fact that these are the majority of the cases that have been submitted for judicial decision. In the two cases, however, which also involved delimitation of maritime zones other than the continental shelf the proportionality factor was, as a matter of fact also taken into consideration: namely in the *Gulf of Maine case, 1984,* which concerned a single boundary line dividing both the continental shelf and fisheries zone, and in the case between *Guinea and Guinea-Bissau, 1985,* where the Arbitral Tribunal determined a single boundary line for the territorial waters, the exclusive economic zones and the continental shelves.

340. According to the jurisprudence, the proportionality factor is a purely geographical concept based on the length of the relevant coasts of the Parties. It is the coastal front which is the basis of the legal entitlement to maritime areas and it is from that coastal front that all *maritime zones of national jurisdiction extend into* or under the sea. Consequently, the equitable considerations which are the basis of the proportionality factor are valid for all maritime zones.

341. Against this background the proportionality factor must be regarded as equally relevant and valid in the present case as when dealing solely with the continental shelf.
It is also contended that, where a single line of delimitation for the whole maritime zone is being established, there may in certain cases be good reasons for including other elements in the proportionality factor besides the basic elements of coastal lengths and of ratios between these lengths and the maritime areas attributed. The Government of Denmark will return to this question after having applied the basic elements to the present case.

342. The relevant area of delimitation between Greenland and Jan Mayen is shown on Map II. The disparity between the two relevant coastal lengths is obvious. There is a more marked difference between them than in any of the previous cases: Greenland's coastal front, i.e., the rectilinear connection between the baseline control points G and H, has a length of approximately 532 kilometres whereas Jan Mayen's coastal front, i.e., largely the facade towards west, is about 54 kilometres long. Thus, the ratio of coastal lengths is 9.8 to 1 in favour of Greenland.

343. Even without taking into account the other relevant circumstances a disparity of this nature should lead to a delimitation line which respects Greenland's right to a maritime zone of 200 nautical miles in accordance with contemporary international law. This would attribute a maritime area of approximately 215,700 square kilometres to Greenland, leaving about 31,400 square kilometres to Jan Mayen, or a ratio of 6.87 to 1 in favour of Greenland. In view of the ratio of the coastal lengths, a distribution of the maritime areas according to a ratio of 6.87 to 1 clearly complies with the subsequent proportionality test from the point of view of protection of Norwegian interests.

344. If, on the other hand, the delimitation line were to follow the median line claimed by Norway, Greenland's area share would be approximately 149,300 square kilometres and Jan Mayen's share about 97,800 square kilometres, in other words a ratio of only 1.53 to

1 in favour of Greenland. This result would seem to be clearly disproportionate and therefore not in accordance with the factor of proportionality, let alone the other relevant factors. It would disregard the difference in the lengths of coasts as a factor to be taken into account.

345. As indicated above, the disparity between the coastal lengths appears to be so significant that these are hardly comparable. The extraordinary character of the delimitation situation becomes even clearer if one goes on to compare also other factual elements concerning Greenland and Jan Mayen.

*

346. Until now, jurisprudence has concentrated on *coastal lengths* when dealing with the proportionality factor.

347. In the great majority of cases this is undoubtedly both natural and fair. However, the Government of Denmark is of the opinion that in extraordinary situations, with very marked differences between the territorial units in many other respects, the principle of equity would seem to demand that other differences also be taken into consideration.

348. It may be a matter for discussion whether the comparison of additional elements should be considered part of the application of the proportionality factor. In cases like the present there are good reasons for this to be done, but on the other hand Denmark attaches minor importance to this predominantly theoretical question as long as other significant features besides the different coastal lengths are actually given due consideration and weight.

349. These features have already been mentioned and are consequently only briefly repeated below with a view to evaluating them as an aspect of proportionality.

350. The *territory* of Greenland is approximately 2,200,000 square kilometres, while the area of Jan Mayen is 380 square kilometres, i.e., a ratio of about 5,800 to 1. If only the ice-free area of Greenland is counted the ratio is about 900 to 1.

351. Greenland has approximately 55,000 *inhabitants,* six per cent. of them living on the east coast. Greenland has been inhabited for several thousand years. Jan Mayen has no settled population at all and has never had any.

352. Greenland has an *economic life* of its own which is mainly dependent on fisheries. No economic activities take place on or from Jan Mayen.

353. In accordance with its Home Rule status within the Danish Realm Greenland has a *Government* and Administration, which is competent in most internal matters. Jan Mayen has no political or social life.

354. Even respecting in full Greenland's 200-mile zone, the extent of the total maritime zone around Jan Mayen will be exceptional, taking into account Jan Mayen's size, character and location and the maritime areas lying to the east of the island and comparing it with the maritime zones of many other States as well as with the relative size of Greenland's maritime zones.

355. In the view of the Government of Denmark a comprehensive consideration of the proportionality factor would not be complete without the inclusion of the above-mentioned additional elements. Together with the difference in coastal lengths these elements serve to emphasize the fundamentally different character of Greenland and Jan Mayen and the reason why the proportionality factor speaks clearly in favour of attributing a 200-mile maritime zone to Greenland.

356. Finally, a delimitation as claimed by Denmark is, according to the *subsequent* or second-phase use of the test of proportionality, entirely equitable and far from having any disproportionate effect in relation to Jan Mayen. On the contrary, as indicated above, Jan Mayen's claim to the whole maritime area under consideration would still seem excessively large.

CHAPTER II

THE TYPE AND METHOD OF DELIMITATION APPROPRIATE IN THE LIGHT OF THE CONCRETE CIRCUMSTANCES

Section 1. The Reasons for the Request for a Single Line of Maritime Delimitation

357. The Government of Denmark has asked the Court to decide where a single line af delimitation should be drawn between Denmark's and Norway's fishing zones and continental shelf areas in the waters between Greenland and Jan Mayen. This request is based on the premise that the delimitation question should be settled in accordance with the concept of an exclusive economic zone which undoubtedly forms part of contemporary international law.

358. Thus, Denmark envisages a single line of delimitation although two different maritime zones are involved. The rules of the Convention on the Law of the Sea, 1982, and of customary international law concerning the exclusive economic zone clearly points towards such a solution when the distance between the relevant coasts is less than 400 nautical miles. In those situations it would seem highly questionable if the solution of delimitation questions should involve the establishment of two separate and different boundaries, one for the shelf and one for the superjacent waters, in the same maritime area. Such a solution would result in the creation of areas of overlapping and conflicting jurisdictions, usually leading to both practical and political problems between the countries involved. In contrast, a single line is conducive to establishing finality and stability in the area.

359. The aim is thus to achieve a single line applicable to all aspects of resources and of jurisdiction in the maritime zones under consideration. In other words, a delimitation dividing the exclusive rights to the whole of the natural resources of the zones – living and non-living on the seabed, under its subsoil or in the superjacent waters.

360. The development in international *judicial and State practice* shows a clear tendency towards the establishment of a single line of delimitation between the maritime zones of States with opposite or adjacent coasts.

361. In the *Libya/Malta case, 1985,* (which concerned only the continental shelf areas of the Parties) the Court expressed itself in the following way:

> "...As the 1982 Convention demonstrates, the two institutions – continental shelf and exclusive economic zone – are linked together in modern law. ..." *(I.C.J. Reports 1985,* p. 33, para. 33), *and*
> "It is in the Court's view incontestable that, apart from those provisions, the institution of the exclusive economic zone, with its rule on entitlement by reason of distance, is shown by the practice of States to have become a part of customary law; ... Although the institutions of the continental shelf and the exclusive economic zone are different and distinct, the rights which the exclusive economic zone entails over the sea-bed of the zone are defined by reference to the régime laid down for the continental shelf. Although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf. It follows that, for juridical and practical reasons, the distance criterion must now apply to the continental shelf as well as to the exclusive economic zone; and this quite apart from the provision as to distance in paragraph 1 of Article 76. This is not to suggest that the idea of natural prolongation is now superseded by that of distance. What it does mean is that where the continental margin does not extend as far as 200 miles from the shore, natural prolongation, which in spite of its physical origins has throughout its history become more and more a complex and juridical concept, is in part defined by distance from the shore, irrespective of the physical nature of the intervening sea-bed and subsoil. The concepts of natural prolongation and distance are therefore not opposed but complementary; and both remain essential elements in the juridical concept of the continental shelf. As the Court has observed, the legal basis of that which is to be delimited cannot be other than pertinent to the delimitation (paragraph 27, supra), ..." *(I.C.J. Reports 1985,* p. 33, para. 34).

362. Reference should also be made to the *Gulf of Maine case, 1984,* in which the Chamber pursuant to the wish of the Parties to the dispute established a single line of delimitation between the disputed maritime areas. Rightly, the Chamber took note of "an increasingly general demand for single delimitation, so as to avoid as far as possible the disadvantages inherent in a plurality of separate delimitations, ..." *(I.C.J. Reports 1984,* p. 327, para. 194).

363. *A single line of delimitation was also, pursuant to the* Parties' request, established by the Court of Arbitration in the case of delimitation between *Guinea and Guinea-Bissau, 1985.*

364. The practice of States shows numerous examples of agreements establishing a single line delimitation for the maritime zones of the Contracting Parties. Reference is made *inter alia* to the following agreements:

Maritime Boundary Agreement between Chile and Peru by *joint Declaration on the Maritime Zone, signed on* 18 August 1952 (Annex 36).

Maritime Boundary Agreement between Peru and Ecuador by joint Declaration on the Maritime Zone, signed on 18 August 1952 (Annex 37).

Maritime Boundary Agreement between Uruguay and Brazil, signed on 21 July 1972 (Annex 38).

Maritime Boundary Agreement between Argentina and Uruguay, signed on 19 November 1973 (Annex 39).

Maritime Boundary Agreement between Colombia and Ecuador, signed on 23 August 1975 (Annex 40).

Maritime Boundary Agreement between the United States of America and Cuba, signed on 16 December 1977 (Annex 41).

Maritime Boundary Agreement between Venezuela and the United States of America, signed on 24 March 1978 (Annex 42).

Maritime Boundary Agreement between the United States of America and Mexico (Caribbean Sea and Pacific Ocean), signed on 4 May 1978 (Annex 43).

Agreement between Denmark and Norway of 15 June 1979 concerning the Delimitation of the Continental Shelf in the Area between the Faroe Islands and Norway and concerning the Boundary between the Fishery Zone near the Faroe Islands and the Norwegian Economic Zone (Annex 32).

Agreement between France and Tonga of 11 January 1980 concerning the Delimitation of the Exclusive Economic Zones (Annex 44).

Agreement between France and Mauritius of 2 April 1980 on the Delimitation of the Economic Zones between Reunion Island and Mauritius (Annex 45).

Agreement between the United States of America and the Cook Islands of 11 June 1980 concerning the Delimitation of the Exclusive Economic Zones (Annex 46).

Agreement between France and Venezuela of 17 July 1980 concerning the Delimitation of the Exclusive Economic Zones (Annex 47).

Agreement between Burma and Thailand of 25 July 1980 concerning the Delimitation of the Territorial Seas and of the Continental shelf. In the event that Thailand establishes its exclusive economic zone the line established by the agreement shall also constitute the boundary between the exclusive economic zones of Thailand and Burma (Annex 48).

Treaty between New Zealand and the United States of America of 2 December 1980 on the Delimitation of the Exclusive Economic Zones of Tokelau and the United States (Annex 49).

Maritime Boundary Agreement between St. Lucia and France, signed on 4 March 1981 (Annex 50).

Agreements between Iceland and Norway of 28 May 1980 concerning Fishery and Continental Shelf Questions, and of 22 October 1981 on the Continental Shelf in the Area between Iceland and Jan Mayen (Annex 16 and 28 respectively).

Agreement between Australia and France of 4 January 1982 concerning the Delimitation of the French Economic Zone and the Australian Fishing Zone and of the Continental Shelf (Coral Sea and Indian Ocean) (Annex 51).

Agreement between France and Fiji of 19 January 1983 concerning the Delimitation of the Exclusive Economic Zones (Annex 52).

Agreement between Denmark and Sweden of 9 November 1984 on the Delimitation of the Continental Shelf and Fishing Zones (Annex 33).

Agreement between Burma and India of 23 December 1986 on the Delimitation of the Maritime Boundary in the Andaman Sea, in the Coco Channel and in the Bay of Bengal (Annex 53).

Agreement on Maritime Delimitation between Dominica and France of 7 September 1987 (Annex 54).

Agreement between Sweden and the USSR of 18 April 1988 on the Delimitation of the Continental Shelf and of the Swedish Fishing Zone and the Soviet Economic Zone in the Baltic Sea (Annex 29).

Agreement between Australia and the Solomon Islands of 13 September 1988 establishing certain Sea and Seabed Boundaries (Annex 55).

Treaty between Denmark and the German Democratic Republic of 14 September 1988 on Delimitation of the Continental Shelf and the Fishing Zones (Annex 30).

Agreement between Poland and Sweden of 10 February 1989 on Delimitation of the Continental Shelf and the Fishing Zones (Annex 31).

Section 2. The Method of Delimitation Appropriate in the Light of the Concrete Circumstances

365. The present case is unique in *judicial practice* in the sense that it concerns the delimitation of maritime zones between, on the one hand, an extensive territory whose population is dependent for its survival on the natural resources of the surrounding sea and, on the other, an island, small in the geographical context and without any population of its own, situated far from the mainland by which it was annexed fairly recently. One looks in vain for similar cases in the practice of international courts. However, in *State practice* examples are to be found similar to the case before the Court.

366. The most clear-cut example of this is provided by the Agreements between Iceland and Norway concerning exploitation of the economic resources in the sea area between Iceland and Jan Mayen (Annex 16 and 28) in which Agreements Norway recognized that Jan Mayen could not be accorded a right to maritime zones at the cost of Iceland's right to a full 200-mile zone. This example from State practice would seem to carry particular weight in the present dispute in the sense that it becomes an essential element in establish-

ing a reasonable basis for solving the remaining delimitation problem in the North Atlantic area which is caused by the presence of the uninhabited island of Jan Mayen. If the principle is reasonable for Norway in the one case, it should be so also in the other.

367. The concept of equity contains, besides the elements of proportionality, finality and stability also an element of predictability. This last element is in particular something which an international tribunal must be concerned with because it is interpreting and developing the law in each particular decision. The International Court of Justice has indeed expressed a view on this point in the *Libya/Malta case* where it stated:

> "Thus the justice of which equity is an emanation, is not abstract justice but justice according to the rule of law; which is to say that its application should display consistency and a degree of predictability; even though it looks with particularity to the peculiar circumstances of an instant case, it also looks beyond it to principles of more general application. This is precisely why the courts have, from the beginning, elaborated equitable principles as being, at the same time, means to an equitable result in a particular case, yet also having a more general validity and hence expressible in general terms; ..." *(I.C.J. Reports 1985,* p. 39, para. 45).

368. This element of predictability assumes a particular importance in a situation where the delimitation issue has been the subject of an interstate settlement not only in the same region but concerning the very same island which is also causing the present dispute, cf. the *dictum* in the *Tunisia/Libya case* to the effect that considering "the element of a reasonable degree of proportionality" account should also be taken "of any other continental shelf delimitation between States in the same region" *(I.C.J. Reports 1982,* p. 93, para. 133 B (5)).

369. Against this background the Government of Denmark submits that the method of delimitation appropriate in the light of the concrete circumstances will have to be something very different from a median line even as a provisional step in the process of drawing a single maritime line indicating the sea-area appertaining to Greenland. Article 6 of the 1958 Convention on the Continental Shelf indicates very clearly that in the absence of agreement two approaches are at the disposal of the States concerned: the median line *or* any other boundary line justified by special circumstances. The relevant provisions of the 1982 Convention, i.e. Articles 74 and 83, do not indicate any particular method of delimitation be it a median

line, a distance criterion or any other method; the emphasis is on the equitable solution to be achieved leaving it to the States themselves, or indeed to the Court, to endow this goal with specific content. The Court has done exactly that in the *Libya/Malta-case* where in the light of the concrete circumstances in that case an adjusted median line was used as a method leading to an equitable solution. In so doing the Court, however, stressed that

> "... The fact that the Court has found that, in the circumstances of the present case, the drawing of a median line constitutes an appropriate first step in the delimitation process, should not be understood as implying that an equidistance line will be an appropriate beginning in all cases, or even in all cases of delimitation between opposite States. ..." *(I.C.J. Reports 1985*, p. 56, para. 77).

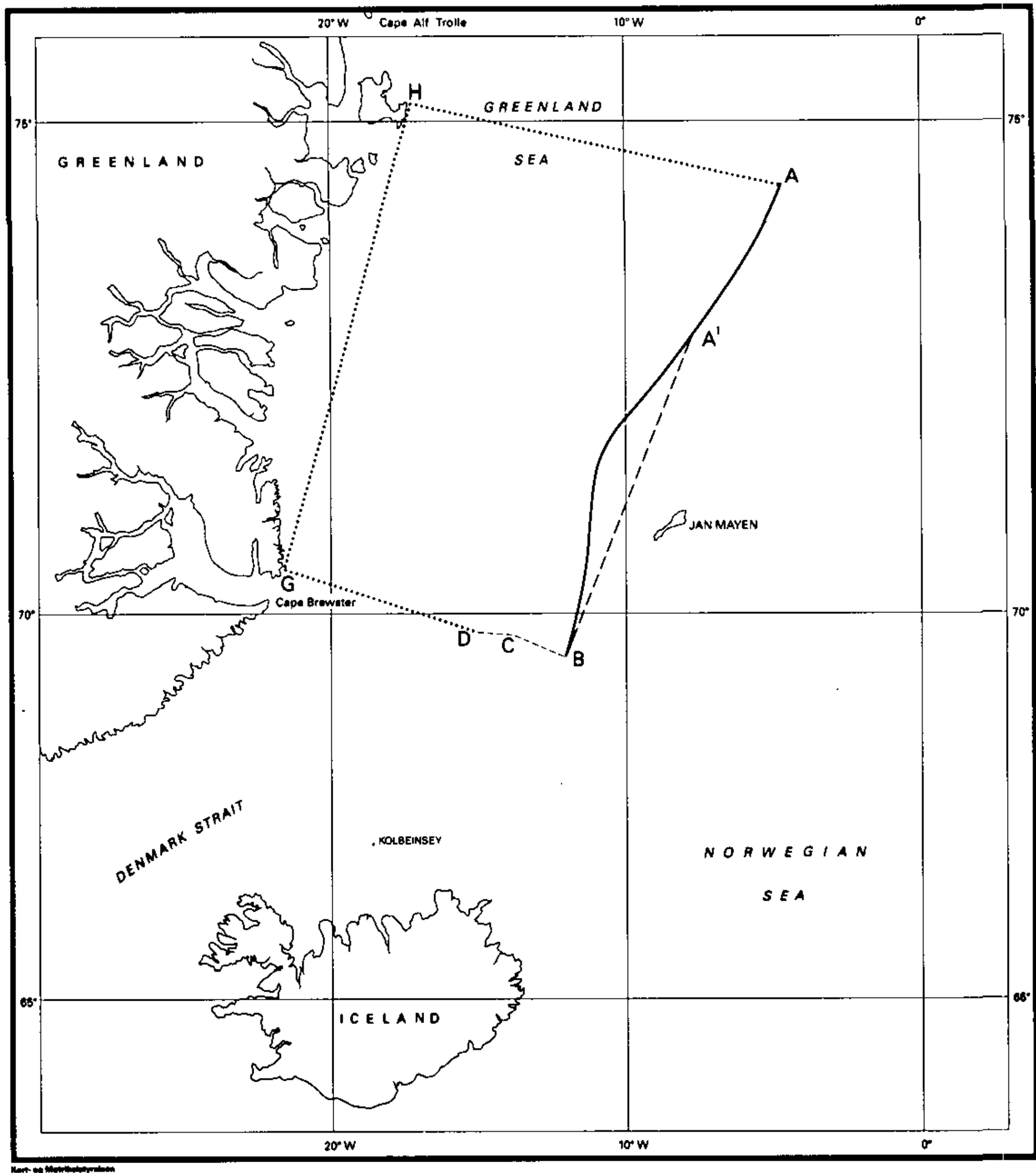
This is in line with the reasoning of the Court in the *Tunisia/Libya case* where it was stressed that the equidistance method "... is not, in the view of the Court, either a mandatory legal principle, or a method having some privileged status in relation to other methods." *(I.C.J. Reports 1982*, p. 79, para. 110).

370. The Government of Denmark further submits that in the particular circumstances of the present case, where the character of the opposite geographical entities in all relevant aspects is indeed extremely different, a delimitation method leading to an equitable solution cannot even as a provisional step take as its starting point a median line as claimed by Norway. Or, to use the line of reasoning of the Court of Arbitration in the *Anglo-French case:* the island of Jan Mayen is *prima facie* creative of inequity. Another method of delimitation must therefore be adopted.

371. Taking as a basis the principle of proportionality "it is certainly essential to define in advance all the areas to be delimited and coastlines to be measured" (diss.op.Oda, *I.C.J. Reports 1985*, p. 133, para. 15). In this case the relevant area and relevant coasts are clearly and easily defined. This geographical situation facilitates the proportionality calculation between the relevant coasts and the area attributed to each Party. In these circumstances the equitable considerations would seem to require that the line of delimitation should allocate areas which correspond, within a reasonable degree, to the ratio of the lengths of the coasts.

372. Thus, a natural starting point would be to look at the *geographical* context governing the relevant area, and treating the area simply as the area abutting on the relevant coasts, irrespective of the

distances involved. Such a method using the ratio of the relevant coastal length of Greenland and Jan Mayen respectively i.e., a ratio of almost 10 to 1 in favour of Greenland would then result in a geographical proportionality line, A[1]B, *beyond* the 200-mile limit towards Jan Mayen as shown on the figure below.



373. The other relevant factors such as *population, constitutional status* and *economic structure* – all these factors operating in favour of Greenland only – further justify the line A^1B shown on the figure.

374. The geographical proportionality line, though equitable in its result as between Greenland and Jan Mayen seen in isolation, cannot, however, be upheld because it is incompatible with the existing legal régime governing the right of States to claim certain areas of the sea bordering their coasts.

375. Thus, any maritime zone off the east coast of Greenland would in the concrete circumstances not be allowed to extend beyond 200 nautical miles.

376. The delimitation issue in the present case does therefore give rise to a particular dilemma. An equitable solution would indicate a line even beyond the 200-mile limit. The existing law of the sea régime, however, restricts Greenland's claim to the 200-mile line which thereby becomes both a *minimum* line *and* a *maximum* line.

377. In sum, the method which comes closest to securing an equitable solution given the particular factual and legal circumstances of the present case consists of applying the distance criterion of 200 nautical miles, so as to recognise the entitlement of Greenland to a full 200-mile zone.

*

378. On Map IV, annexed to this volume, the line claimed by Denmark applying a distance criterion of 200 nautical miles measured from the baseline along the relevant part of the coast of East Greenland is indicated (in red). For comparison the relevant maritime zones in the North East Atlantic Region are also indicated (in black).

PART III

SUBMISSIONS

379. In view of the facts and arguments presented in Parts I and II of this Memorial,

May it please the Court:

To adjudge and declare that Greenland is entitled to a full 200-mile fishery zone and continental shelf area vis-à-vis the island of Jan Mayen; and consequently

To draw a single line of delimitation of the fishing zone and continental shelf area of Greenland in the waters between Greenland and Jan Mayen at a distance of 200 nautical miles measured from Greenland's baseline.

Copenhagen, 31 July 1989.

(Signed) TYGE LEHMANN

Agent of the Government
of the Kingdom of Denmark

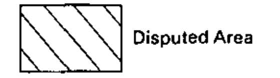
MAPS

MAP I

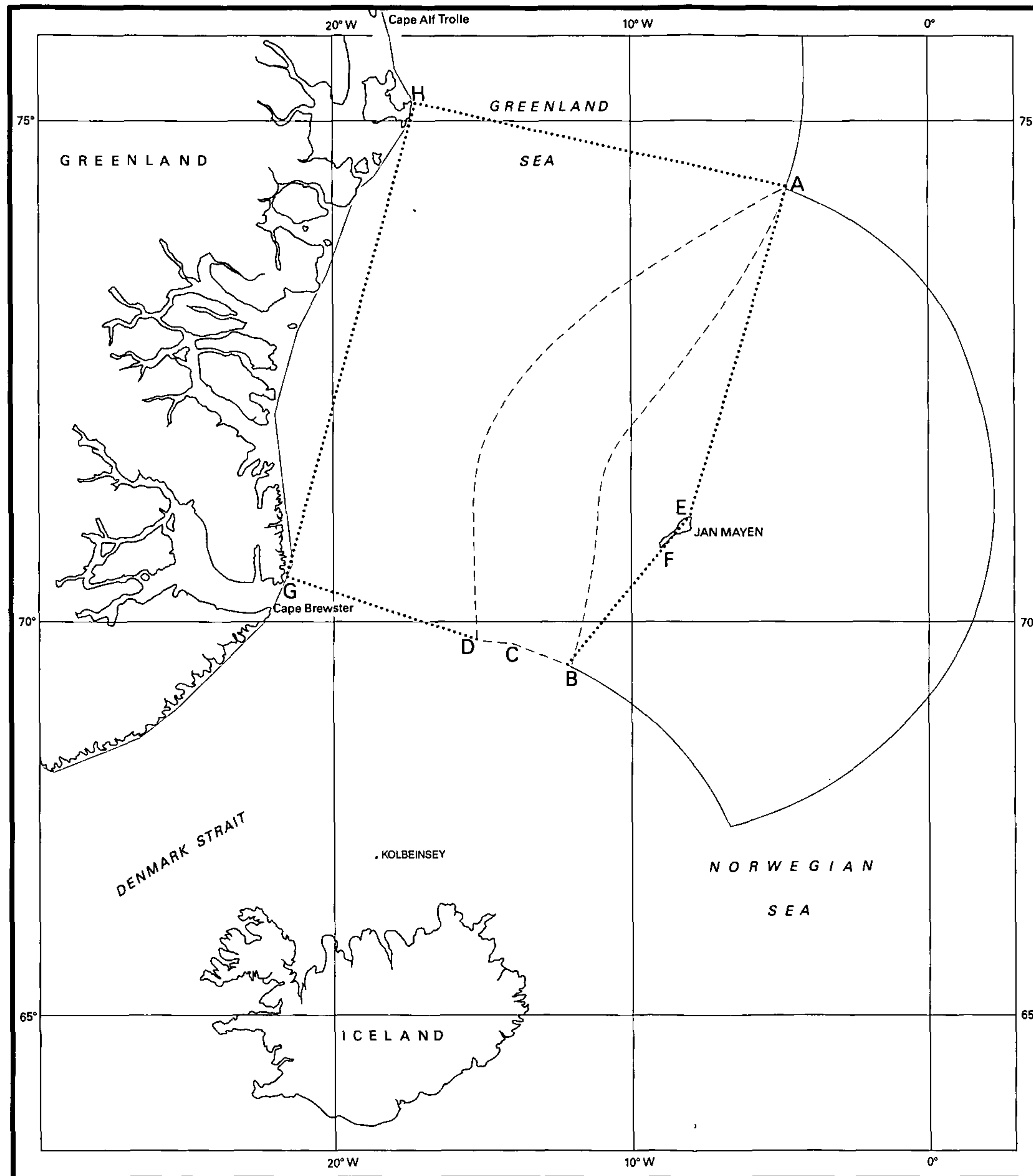
THE NORTH EAST ATLANTIC REGION

Polar Stereographic Projection

Scale 1:15 000 000


Disputed Area

Kort- og Matrikelstyrelsen



MAP II

DISPUTED AND RELEVANT AREAS IN THEIR GEOGRAPHICAL CONTEXT

Mercator Projection

Scale 1:7 000 000

List of Coordinates:

A:	74° 21'5 N	4° 56'4 W
B:	69° 36'0 N	12° 07'2 W
C:	69° 49'0 N	14° 00'0 W
D:	69° 51'0 N	15° 07'3 W
E:	71° 09'7 N	7° 57'5 W
F:	70° 49'8 N	9° 03'5 W
G:	70° 32'0 N	21° 29'4 W
H:	75° 08'3 N	17° 13'4 W

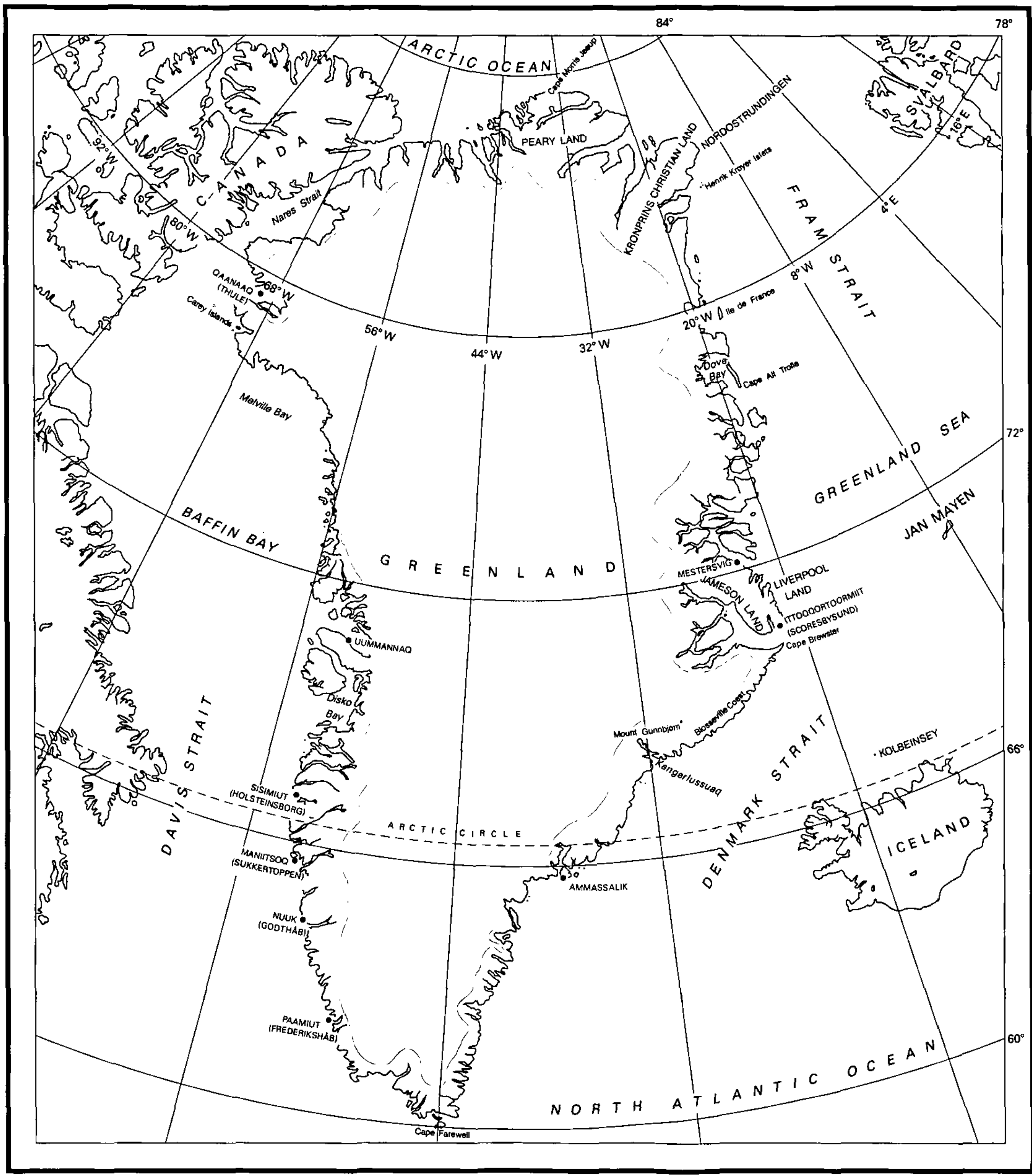
– – – – 200-nautical mile line off East Greenland.

– – – – Median line between Greenland and Jan Mayen. The limiting line BCD towards the south.

•••••••••• Limiting "computation" lines AE, FB, DG and AH. Coastal fronts GH and FE.

——— Straight baselines of East Greenland.

——— 200-nautical mile lines off Greenland, Iceland and Jan Mayen respectively.



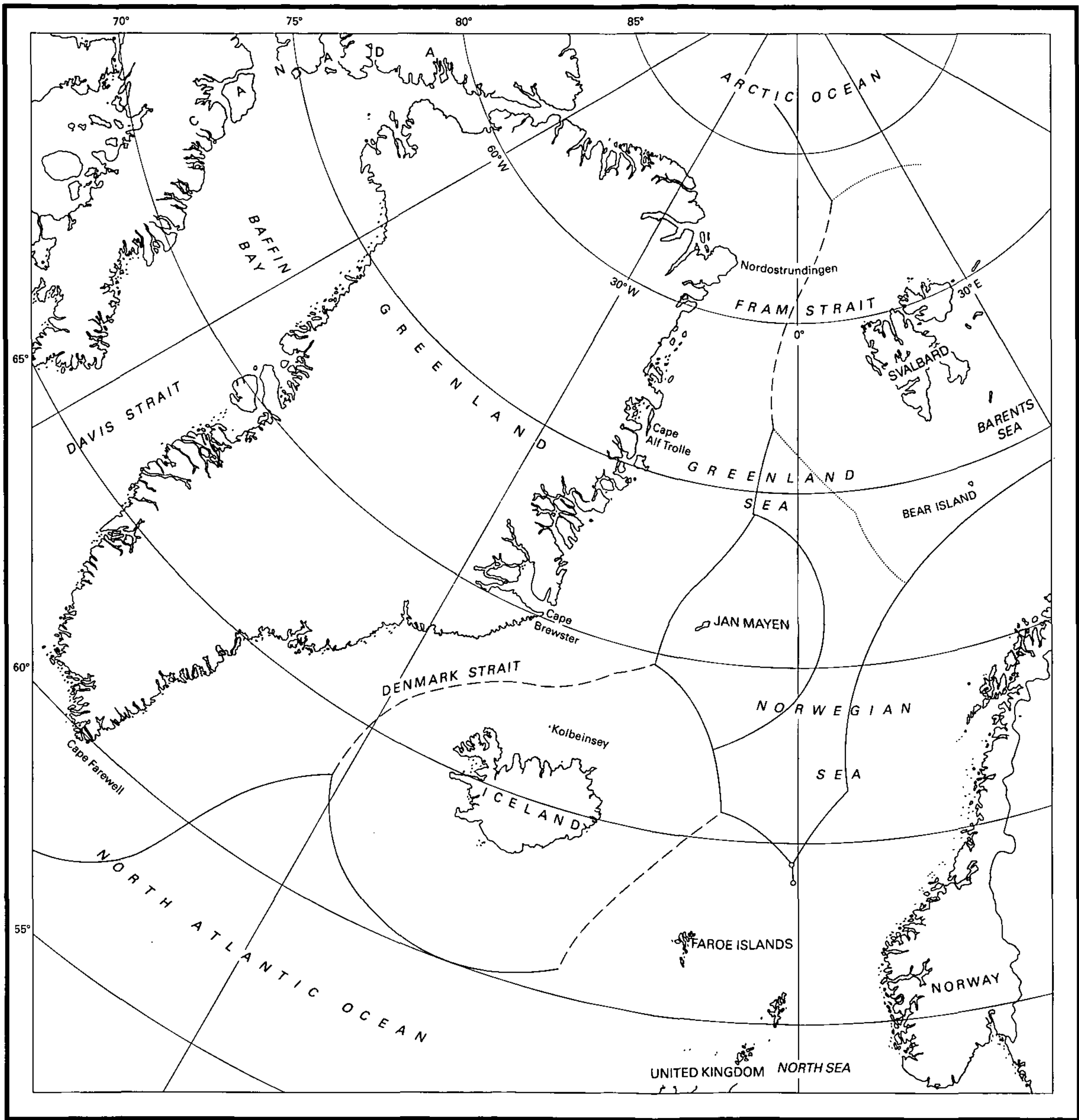
MAP III

GREENLAND AND SURROUNDING WATERS

Polar Stereographic Projection
Scale 1 : 12 500 000

MAP IV

MARITIME ZONES IN THE NORTH EAST ATLANTIC REGION



Polar Stereographic Projection

Scale 1:15 000 000

- 200-nautical mile line off East Greenland vis-à-vis Jan Mayen.
- Approximate outer limits of EEZ/Fishery lines in the region.
- Delimitation line Faroe Islands-Norway.
- Delimitation lines not yet agreed.
- Fishery protection zone.